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PREFACE

It is now over thirty years since Congress enacted the first disaster relief act of 1950 - PL 81-875. Since then the simple act which began as a measure primarily to repair flood damaged farm-to-market roads has been amended to a profusion of new and expanded types of disaster assistance. The purpose of this history has been to describe and analyze each act through the legislative process, to describe the changes in terms of the previous legislation, and to the extent possible, to illuminate from the written record, what was Congress' legislative intent.

To the extent that there exists a written record from Committee reports and Congressional debates, this legislative history does provide such information as exists on the legislative intent. Unfortunately, there are major gaps in the printed record. Much of the legislation was developed in Committee or by staff members on which no record exists. Debates were few and of sparse content since most disaster relief legislation was neither partisan nor controversial.

By necessity the first disaster relief acts were drafted in very general terms as delegations to the President to be passed on to the Federal agency to administer. This could not have been otherwise until the government had acquired some experience and knowledge of what was required. Congress accepted the Federal agency's interpretations of the law until the first major change in the law in 1969 (PL 91-79) after which it began to enumerate more specifically what benefits the laws would provide. Ironically, at a time when most Federal agencies were expanding their roles and some were building empires, the disaster relief administering agency adhered to a passive role. It was Congress and Congress alone for almost the entire period of the history, which initiated the legislative changes and saw the need of changing the law.

There were some fifteen disaster relief statutes passed during the period of this history, and many of them have numerous sections, each, describing particular provisions of the act. To enable the reader to better understand the contents of each act and to identify its particular emphasis, I have chosen to divide the substantive sections of the acts into three classifications (1) public assistance, (2) individual assistance, and (3) directive/administrative implementation. In this way, it is hoped that the reader may still have a view of the forest as well as the trees.

In writing the history, as each new piece of legislation was introduced, I tried to satisfy my own curiosity as to why each legislative change occurred, and why and how it happened when it did. The author freely admits that some of his explanations are speculative, but yet have some substance - which may be better than offering none at all. In this respect, this legislative history differs from the usual pattern of being primarily a compilation of legislative bills focusing only on legal analysis, - a compendium which includes just about everything and yet which explains little.

It is unusual that a government agency allows its staff member such freedom as I have enjoyed in preparing this history - in selecting the materials and in interpreting their meaning. I am very grateful to my superiors of FDAA (prior to its becoming a part of the Federal Emergency Management Agency (FEMA) for their trust and confidence in allowing me such free rein.

I offer my special thanks to the following persons who took the time from their otherwise heavy schedules to critically read the entire manuscript and give me the benefit of their comments: To Bill Crockett who instigated the project and who by critically reading the first draft provided it with a better balance; to Dr. Clark Norton of Congressional Research who was encouraging throughout and who lent to his comments his vast knowledge of the legislative process and of disaster relief legislation in particular; to Bob McFerren, Jim Dokken, Frank Maukenhaupt and Craig Annear, all of whom helped make this a better document; and to Ms. Vanessa Quinn for her expert typing of the manuscript.

I owe also some long term intellectual obligations and indebtedness which I would like the opportunity to express here: ~~to~~ of my teachers and friends who helped shape my intellectual development and my approach to historical scholarship: to Allan Saunders, my first teacher of political science a half century ago at the University of Minnesota, who went on at the University of Hawaii to teach and inspire virtually every member of Congress who came from that State; to the late Senator Paul Douglas, my teacher of economics at the University of Chicago and of blessed memory; and to my wife Dorothy who has shared my aspirations these four decades, in grateful remembrance.

CHAPTER I. PUBLIC LAW 81-875, THE FEDERAL DISASTER ACT OF 1950

When Congress passed the Federal Disaster Act of 1950, Public Law 81-875, in its second session, its seminal importance upon future disaster legislation was hardly predictable. Congress' immediate concern was to relieve the financial burdens of repairing the farm-to-market roads and bridges in the rural counties and townships in flooded areas of Minnesota and North Dakota. For this purpose, Congress authorized an appropriation of "not exceeding \$5,000,000" which the President was authorized to use under the terms of the Act. The amount appropriated was surely not significant, since much larger sums previously had been available for Federal disaster assistance.

In what, then, lies the importance of Public Law 81-875 which at that time drew so little attention and was enacted with no controversy and almost no debate? The Act's significance stems from several facets: (1) It was the first piece of permanent and general disaster legislation enacted by Congress. (2) Its concepts and authorities became the model of all succeeding Federal disaster laws which exist today. Public Law 81-875 is in fact the "granddaddy" of them all.

A legislative history¹ of Federal disaster assistance must therefore begin with a detailed analysis of its first law.

I. Historical Antecedents

It should occasion no surprise that our first Federal disaster law, like most Federal programs, was the product of accretion and gradual evolution. As is typical, few programs arrive on the scene in full maturity in a single swoop. Public Law 81-875 was no exception. Ample precedents existed for it in different forms almost from the birth of the republic. Congressman Harold Hagen of Minnesota, its principal sponsor, offered the House Committee on Public Works at its hearing a list of 128 separate laws that Congress had passed since 1803.² It had become Congress' practice whenever a community or an area of a State was struck by a disaster--be it a flood, a tornado, a fire, or an epidemic--to appropriate funds or make available help from the military. Each of these special acts, albeit enacted after the disaster, had helped establish a solid precedent for "supplemental" disaster assistance to State and local governments. Hagen and the 42 co-sponsors in the Senate could properly argue that there was nothing really new in this proposed legislation.

In recent years and especially since the New Deal era, Congress had established other programs of disaster assistance, each administered by the Federal agency to which the funds were appropriated. In the House hearings of July 19, 1950, Assistant Director of the Bureau of the Budget, Elmer Staats (later U.S. Comptroller General), described some of these programs.³ While each of these programs served a particular purpose under Congress' delegated powers, viewed in toto, they definitely brought the Federal Government into the disaster business. For example, since 1936, the Corps of Engineers had been engaged in a mammoth national flood control program of building protective structures for which Congress had appropriated \$15,000,000 under its Flood Control Act. The Bureau of Public Roads in the Department of Commerce had expended \$39 million since 1934 in repairing flood damaged roads and bridges on the Federal-aid road system. The Reconstruction Finance Corporation, originally established to provide loans at a reduced cost to businesses, for the past decade had administered a program of loans to individuals, businesses, and public entities for disaster repair and restoration. During the same Congress, the Farm Credit Administration in the Department of Agriculture was established and empowered to make production loans to farms in "distressed emergency areas."

It is evident from the above that a number of ad hoc Federal disaster relief programs had already been established before any general legislation existed. These were mainly agency programs directed to specific objectives such as road system repairs, flood control projects, agricultural relief, etc.

It was not until 1947 that general disaster relief legislation began to take form. Two separate acts of the 80th Congress must be noted: The first of these was PL 80-233 of 1947, an act which authorized Government surplus property to be given to State and local governments for disaster relief. The act was hardly conspicuous in importance except that it marked the beginning of other general acts which were to follow.

The second act - PL 80-785, approved June 25, 1948 - was a "Second Deficiency Appropriations Act, 1948"⁴ and judging from its title, would appear to be altogether insignificant in the hierarchy of disaster relief legislation, except for its formulation of concepts and language which were to become the basis of future legislation. The Deficiency Appropriations Act was 22 pages in length and appropriated funds for dozens of agencies. On the fourth page, under the heading of "Disaster Relief," there was provided an appropriation of \$500,000 to remain available until June 30, 1950", in language

and with procedures that were to remain the foundation of all future such legislation. The 1948 act was to be followed by a similar act one year later which appropriated \$1,000,000, as part of the 1950 Independent Offices Appropriation Act, PL 81-266, but this time advancing a new concept by its title, "Emergency Fund for the President".⁵ Those parts of the 1948 and 1950 appropriations acts relating to disaster relief are reproduced in the footnotes of this chapter to afford study of their language in relation of PL 81-875. It will be noted, however, that except for the differences in title and minor changes in language, the 1948 and 1950 appropriations provisions were essentially the same:

- (1) The President was given the authority in the 1950 Act to carry out its provisions (using the language of the 1948 act) "through such agency or agencies as he may designate."
- (2) Its purpose was "to supplement the efforts and available resources of State and local governments" whenever
- (3) the President "finds that any flood, fire, hurricane, earthquake, or other catastrophe in any part of the United States is of sufficient severity and magnitude to warrant
- (4) emergency assistance by the Federal Government" in alleviating hardship or suffering caused thereby.
- (5) The Governor of the State in which "such catastrophe shall occur...shall certify that such assistance is required" and "shall have entered into an agreement with such agency of the Government as the President may designate" and
- (6) "giving assurance of expenditure of a reasonable amount of the funds of such State, local governments therein".
- (7) It was further specified that "no part of this appropriation shall be expended for permanent construction" or for (Federal) "departmental personal services".

The 1948 appropriations act contained the essential ingredients of PL 81-875 which spelled them out in slightly greater detail.

The differences between the 1948 and 1950 appropriations acts were minimal: (1) the 1950 Act established a separate "Emergency Fund for the President" which was largely a matter of terminology since the 1948 appropriation could be used for that par only; and (2) the 1950 act attempted to establish a legal justification in terms of, "To provide for emergencies affecting the national interest or security...". In PL 81-875 this changed to "to provide an orderly and continuing means of assistance... to States and local governments...". Although PL 81-875 refined the language further to include a reference to the States and local governments as "in carrying out their responsibilities...", the basic tenets were present in the 1948 and 1950 appropriations acts. PL 81-875 added "drought" and "storm" to the list of major disasters.

Having established these precedents, and given further momentum by disasters of sufficient legislative interest, it was only a matter of time before the arrangements established to administer the disaster funds would be given permanent and continuing status. The original \$500,000 appropriation had been increased to \$1,000,000 by the next Congress, which suggests some flexibility on its part towards increasing the emergency funds where "sufficient severity and magnitude" warranted. The President had designated the newly created General Services Administration to administer the Emergency Fund, and from a reading of the legislative record, there may have existed some dissatisfaction both with the amount of money available and the way it was being administered.

When Congress convened in 1950, bills were introduced for the first time for permanent and general legislation. The disaster episode responsible was major flooding in Minnesota and North Dakota. Two bills were introduced by House members: HR 8396 by Congressman Lemke of North Dakota and H.R. 8461 by Congressman Hagen of Minnesota, both similar in content. Lemke passed away shortly thereafter, and Hagen sponsored H.R. 8396 in Lemke's honor. It copied the wording of the 1948 and 1950 appropriations acts with few changes. This was the Disaster Relief Act of 1950. It may be noted that the first disaster relief act (as were all those that followed) was the product of bipartisan collaboration (Lemke, a Democrat, and Hagen, a Republican) in both the House and the Senate, and had the support of the Truman administration.

II. Legislative Development

At the time that bills H.R. 8396 and H.R. 8461 were being considered, seven other disaster relief bills were introduced, three in the House and four in the Senate.⁷ Those were special acts aimed at providing relief for specifically named States, similar to others passed by Congress in previous years. The nature of these bills may be inferred from H.R. 8435 also proposed by Congressman Hagen, which provided for an appropriation of \$50 million in which, under an agreement with the Federal agency, the State and local subdivisions would pay not less than one-sixth nor more than one-fourth of the cost of "reconstruction or repair" of streets, roads and bridges⁸, etc. Reading from the record, one gets the impression that the sponsors of these special bills had put a high price tag on them in order that Congress might reject them and settle for some permanent disaster legislation.

The legislative history of PL 81-875 is unique in that all its development took place in the House, in contrast to the fact that

all the later Federal disaster relief acts were framed principally in the Senate. In this instance, the Senate's action was limited to accepting the House bill, in effect concurring on a completed bill.⁹

Although the idea of establishing permanent or general legislation looms large as we look back on PL 81-875, that objective was likely remote from those actively engaged in its passage. The delegations of State and local officials who came beseeching Federal dollars were focussed strictly on assistance to local governments. There is no single sentence in these hearings asking for similar direct assistance to State governments. Assistance for repair of State facilities was neither requested nor considered. It seems a bit ironic, looking back, that the presently impressive array of Federal disaster relief programs had their inception in plain everyday problems of maintaining and repairing the rural "farm-to-market" roads. For that, in fact, was the gravamen of their message. As Hagen stated their argument at one point, "...our primary purpose here today is that of getting assistance to rebuild the streets and farm-to-market highways and roads."¹⁰ The Commissioner of the Bureau of Public Roads had explained that although that agency had spent millions in disaster road repair, the existing law limited its program to the primary and secondary Federal-aid road systems. Without a change in the law, there was no way in which Federal dollars could be regularly used for the repair of county and township roads. As the representative of the Minnesota Farm Bureau stated in his testimony, "...to us rural people, primary roads were not always the important ones. They are not the ones we use in our everyday work."¹¹ During the course of the hearings, local officials recited one example after another to prove to the Congress that they were in dire need of relief.¹² County finances in many counties were reaching the breaking point from the costs for repairing roads, bridges and culverts from previous disasters, with no resources available to combat the present flooding. As a typical example, one rural county in Minnesota, Kittson County, with some seven thousand population still had a \$170,000 deficit in its road and bridge fund due to a 1948 flood. Another county with a \$5 million assessed valuation had a road and bridge deficit of almost \$1 million.¹³ Such examples were repeated in earnest, demonstrating that there existed hardship and suffering and a need for Federal assistance.

In neither body of Congress did the passage of PL 81-875 require much debate. As will be seen from our analysis of the sections of the law, only a few changes were made: no change in the wording of PL 81-875 when compared to H.R. 8396, except for certain deletions and additions by the unanimous report of the

House Committee on Public Works. The Senate bill known as S. 2415, as introduced by Senator Cordon of Oregon, had no less than 40 co-sponsors.¹⁴ The only controversial element of H.R. 8396, viz., Section 6 which provided for Federal matched funding for permanent repair of public facilities, had already been deleted by the House. The fact that the House Committee had reported the bill unanimously weighed as a factor in the Senate's early decision. Partisan voting in the sense of a "party line" was absent--a characteristic which was to apply in future revisions of disaster relief laws.

No vote count was taken that would inform us of who was for and who was against the legislation. There was no organized opposition to passing PL 81-875. Members of Congress of both chambers who spoke on the measure showed awareness of disasters that had affected their constituencies and recognized that in future disasters they might well be exchanging places with those now asking for relief. Debate and commitment had hinged on pragmatic considerations of fashioning a law that would provide disaster relief through greater efficiency and economy and put an end to Congress' having to consider special legislation after each big disaster.

The arguments presented against the bill were few: That heretofore Congress had passed upon the need for funds, and that it was not left entirely to the Executive; that the bill would eventually pile on another Government agency the job of administering the program, thus adding to the expense; that a war was going on and the bill ought not to be passed now; that the funding of \$5,000,000 was too little in view of the amounts expended in recent Federal disaster relief. They were quickly disposed of by Chairmen Whittington in the House and McClellan in the Senate. Only the last criticism seemed to be shared by a number of Members of both houses. But the concern was resolved in the House by a common recognition that once passed, more funds could be appropriated if needed. There were numerous favorable arguments offered: that the Act would promote greater efficiency and economy through better coordination; that it would reduce red tape in reaching a decision; and that it would establish permanent legislation instead of Congress' having to pass special acts with each big disaster. But perhaps, if one reads these debates correctly, the most potent argument (which was repeated many times in both houses) was the fact that ample precedents existed for it, and that Congress was, in effect, taking a process that already existed and was used from time to time and establishing general legislation whereby more regular assistance could be afforded.¹⁵

III. Analysis of Public Law 81-875, Section by Section

The singular importance of PL 81-875 is that it furnished the model of subsequent legislation. In the section that follows, the entire act is reproduced, followed by brief commentary explaining each section for the purpose of tracing the lineal threads to their source and to help reveal Congress' legislative intent.

PUBLIC LAW 875 - 81st CONGRESS

CHAPTER 1125 --2d SESSION

H.R. 8396

AN ACT

"To authorize Federal assistance to States and local governments in major disasters, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the intent of Congress to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate suffering and damage resulting from major disasters, to repair essential public facilities in major disasters, and to foster the development of such State and local organizations and plans to cope with major disasters as may be necessary."

Commentary:

In this preamble, Congress stated with precision the objectives of the Act, as good evidence as any of its purposes: an orderly means of Federal assistance based upon certain concepts and procedures in contrast to having to ask Congress for funds after each disaster; a continuing means which implies some permanence in this legislation; "their responsibilities" which underscores the basic legal premise of this law that coping with disasters is the responsibility of the States and local governments and is corollary to Section 2, that Federal assistance is "to supplement the efforts and available resources of States and local governments"; a reference to alleviating suffering and damage which suggests Congress' sensitivity to how disasters affect people; major disaster to be defined as determined by the President upon a Governor's request; and the repair of essential public facilities as one of its major purposes. Concerning the last

clause, "to foster development of such State and local organizations and plans," there is some ambiguity and question as to why it was included at this time.

X It has been noted earlier that the wording of H.R. 8396 and the final act, PL 81-875, were identical in almost all sections--which suggests some collaboration between its Congressional and Federal agency sponsors.

The last clause of the preamble is deserving of a comment in view of the fact that there is no section of PL 81-875 which can be said to directly "foster the development of such State and local organizations and plans..." There is no reference in the Act which suggest that to administer the Act, State and local governments are to establish "organizations and plans," though as a consequence of a "continuing" program, it could be inferred that these would be created. More likely, however, is the fact that in drafting PL 81-875 the Administration was already working on developing civil defense legislation against nuclear attack. The Federal Civil Defense Act of 1950, PL 81-920, was passed during the same session of Congress (signed by the President on January 12, 1951). As a result, States did develop "State and local organizations and plans" that would serve a dual purpose for both natural disasters and nuclear attack preparedness. It is a fair inference that the idea of fostering State and local organizations, while not directly concerned with the Federal Disaster Act was included because its drafters foresaw the need. Also, it might be pointed out that, simultaneously the Council of State Governments had already developed its "Model State Civil Defense Act" which it had begun to successfully promote among the States and which had precisely the objective of fostering State and local organizations and plans to cope with natural disasters.

* * *

"Section 2. As used in this Act, the following terms shall be construed as follows unless a contrary intent appears from the context:

(a) "Major disaster" means any flood, drought, fire, hurricane, earthquake, storm, or other catastrophe in any part of the United States which, in the determination of the President, is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government to supplement the efforts and available resources of States and local governments in alleviating the damage, hardship or suffering caused thereby, and respecting which the Governor of any State (or the Board of Commissioners of the District of Columbia) in which such catastrophe may occur or threaten certifies the need for disaster assistance under this Act, and

shall give assurance of expenditure of a reasonable amount of the funds of the government of such State, local governments therein, or other agencies, for the same or similar purposes with respect to such catastrophe;

(b) "United States" includes the District of Columbia, Alaska, Hawaii, Puerto Rico, and the Virgin Islands;

(c) "State" means any State in the United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands;

(d) "Governor" means the chief executive of any State;

(e) "Local government" means any county, city, village, town, district, or other political subdivision of any State or the District of Columbia;

(f) "Federal agency" means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, excepting, however, the American National Red Cross."

Commentary:

Section 2 of the Act is certainly one of the most important single sections of the law. It describes the procedures for determining the conditions under which Federal assistance was to be administered--what constitutes a major disaster, who may request it, who decides, who may receive assistance, as well as the terms under which such assistance may be made available.

It was indicated earlier that the procedures established for PL 81-875 had their origin in the Independent Offices Appropriation Act of 1950, PL 81-266. Not only are the concepts the same, but the wording of the two acts are alike, with no substantive changes. It is noted that the listing of the types of disasters in the 1950 act was changed by the addition of "drought" and "storm" but that the phrase, "or other catastrophe in any part of the United States" was unchanged. The determination of "sufficient severity and magnitude" and the decision to provide Federal assistance was left to the President. As was observed in the commentary on the preamble to the act, Congress' clearly expressed view in this act was that the legal responsibility for coping with disasters belonged to the States and the local governments created by them. The intention that the assistance rendered is to be supplementary is clearly expressed. This is further evidenced in the commentary of other sections of the act.

The term "major disaster" found in Section 2 was a new legislative concept. The 1950 Appropriations Act referred instead to the President's findings as "to warrant emergency assistance by the Federal Government." Section 2 changed that to "to warrant disaster assistance." The new Act also gave the power to the President to act if, in his opinion, the condition "threatens to be of sufficient severity and magnitude"¹⁶ (emphasis added). In both acts, the request for aid was to be from the Governor of the State in which the catastrophe occurred, together with his certification for the need of assistance. House bill 8396 as originally introduced did not contain the provision that the Governor "shall give assurance of expenditure of a reasonable amount of funds" by the State and local governments. This was adopted from the provision in the Appropriation Act, and has, indeed, been continued in successive Federal disaster relief acts.

The House Report on H.R. 8396 summarized the situation very well when it said:

In the past, appropriations to the President have been made for relief from floods and snowstorms in particular areas without authorization, and hence this bill is not novel legislation. The bill provides a framework for the Federal Government under which prompt action can be taken in meeting the needs of stricken areas, and it will establish a general Government policy with respect to emergency relief in all future disasters, instead of meeting the problem after it occurs.¹⁷

It may be noted also that the Senate report on the same bill used the same expression, "and hence this bill is not novel legislation."¹⁸ It is worth noting that the term "major disaster" was used a number of times during the discourse on PL 81-875. It may have been intended as a generic rather than a legal expression as framed in the law--which cannot be known. President Truman spoke of "major disasters,"¹⁹ occurring from time to time, in his 1951 fiscal year message. Mr. Jesse Larson, GSA Administrator then in charge of disaster relief, talked of "major disasters that have occurred since 1947."²⁰ Congressman Blatnik referred to the fact that in the last year part of his district "had been declared a disaster area by President Truman,"²¹ Without making too much out of these comments, it does suggest an understanding of a practice not too much different from that established under PL 81-875.

From the precedents previously established, there existed in both chambers a consensus that the decision to provide Federal disaster assistance clearly belonged to the President and no one else.

But there was a question in the minds of some members as to what should be the degree of "severity and magnitude" that would warrant the assistance. It has been noted that Section 2 gave the authority to the President to determine when such a condition "is or threatens to be" of major disaster magnitude. But some members were anxious to know more: How big a disaster did it have to be before it was "major" under the law? An interesting colloquy took place when Senator Robertson (Va.) asked Chairman McClellan (Ark.) as floor manager of the bill.²² Could a disaster affecting three or four counties constitute a major disaster? Suppose it affected only as few as 150 persons in a single county? Was it not a major disaster to the Senator if his home was washed away by a flood and destroyed? To these questions, McClellan replied that he would not answer them since this would be the President's decision. To this, he added, "However, we can certainly rely upon whomever may be the President of the United States having some judgment and also some humanitarian feelings and applying such feelings in making a decision as to what is a major disaster, where people have suffered or are about to suffer, and where the Federal Government should step in and assist."

Another question on which some members sought enlightenment: What was a "reasonable amount of funds" that the State and local governments were required to give "assurance of expenditure"? The question was raised in both chambers, but did not become an issue. Congressman Hagen pointed out that the language used in this bill was the same as had been used in the past two years in administering the emergency fund appropriation of fiscal year 1950. Also, he said, the amount would depend on what each political subdivision "may be able to do for itself and also, the character and size of the disaster."²³ It would be up to each Governor and other State officials to decide. It is not entirely clear from the Senate debate that all members fully understood the nature of the "contribution" that would be made by each branch of the government. Senator Young (R) of North Dakota, for example, asked, "Does the bill provide for any particular matching system? Would a local unit of government, under such a matching system, have to match the Federal contribution up to the extent of 25 percent, or 90 percent, for instance?"²⁴ To this question, Senator McClellan gave the vague reply, "That matter could be handled in either way, under the terms of the bill. The local government could be required to make some contribution towards such restoration."²⁵

A note of warning here. Looking back a quarter of a century later, when (under the last two Federal disaster relief acts) there is now reimbursement for permanent repair and restoration, one can get a distorted view of the meaning of "a reasonable amounts of funds."

One must bear in mind that under PL 81-875 the costs paid by the Federal Government were only for "emergency repairs and temporary replacement" which in many cases may not have meant much more than filling up the pot holes in the roads and throwing across temporary timbered bridges. Few States at that time had emergency funds of any kind for local government public facilities' repair.²⁶ By the very fact that the local governments had to defray the cost of permanent repairs and restoration, they could not have avoided expending at least a "reasonable amount of funds."

Subsections (b) through (e) defining the geographical scope of the Act, and the meanings of the terms employed were left the same as in Hagen's bill, H.R. 8396. When H.R. 8396 was reviewed by the Federal agencies a number of changes were proposed. The Departments of the Army and the Interior asked that the insular possessions be included, i.e., the Canal Zone, Guam, American Samoa, and the Midway Islands.²⁷ The Interior Department proposed also that the Indian communities²⁸ for which the Government acted in trust be specifically named. The House Report was silent on expanding the geographical scope of the Act, and with reference to naming the Indian communities, concluded that since they were located in the United States, they "would be included in the definition."²⁹

"Section 3. In any major disaster, Federal agencies are hereby authorized when directed by the President to provide assistance (a) by utilizing or lending, with or without compensation therefor, to States and local governments their equipment, supplies, facilities, personnel, and other resources, other than the extension of credit under the authority of any Act; (b) by distributing, through the American National Red Cross or otherwise, medicine, food, and other consumable supplies; (c) by donating to States and local governments equipment and supplies determined under then existing law to be surplus to the needs and responsibilities of the Federal Government; and (d) by performing on public or private lands protective and other work essential for the preservation of life and property, clearing debris and wreckage, making emergency repairs to and temporary replacements of public facilities of local governments damaged or destroyed in such major disaster, and making contributions to States and local governments for purposes stated in subsection (d). The authority conferred by this Act, and any funds provided hereunder shall be supplementary to, and not in substitution for, nor in limitation of, any other authority

conferred or funds provided under any other law. Any funds received by Federal agencies as reimbursement for services or supplies furnished under the authority of this section shall be deposited to the credit of the appropriation or appropriations currently available for such services or supplies. The Federal Government shall not be liable for any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Government in carrying out the provisions of this section."

Commentary:

If Section 2 can be described as setting forth the procedures and eligibility criteria of the new Federal assistance program, Section 3 presents the "what" of the program, in listing those services to be made available. Assistant Director of the Bureau of the Budget, Elmer Staats, one of the prime progenitors of the legislation, in testifying before the House Committee, said "...Section 3 is perhaps the most important section of the bill. If the Federal Government is to utilize its resources to the fullest extent, it is essential that there be no restrictions which would limit Federal agencies from performing activities that are essential for the protection of life and property. Section 3...clearly meets this requirement."³⁰

Upon the declaration of a major disaster, and when directed by the President, Federal agencies were to do these four things:

- (1) To use or lend to the States and local governments their equipment, supplies, facilities, personnel, and other resources;
- (2) To distribute through the American Red Cross or otherwise, medicine, food, and other consumable supplies;
- (3) To give to the States and local governments surplus equipment and supplies;
- (4) To perform on public or private lands work essential to the preservation of life and property, clear debris and wreckage, make emergency repairs and temporary replacement of public facilities of local government, and make contributions to States and local governments for these purposes. Finally the section provided the authorities for funding to carry them out.

Each of these subsections will be commented on in turn.

As has been explained earlier, there was nothing new in enacting the first three clauses (a), (b) and (c). As stated by Jess Larson, Administrator of the General Services Administration which was then administering the President's emergency fund,³¹ "...there is nothing novel in the philosophy expressed in this bill. Since the early days of the Republic, legislation has from time to time been enacted for the purpose of furnishing Federal

assistance of various types to help the victims of disasters."³² Among the types of assistance listed in Section 3 was in (c) "donating to States and local governments equipment and supplies determined under then existing law to be surplus to the needs and responsibilities of the Federal Government".

There was no contention about the language used in Subsection (d) which would authorize Federal funding for debris removal and for "making emergency repairs to and temporary replacements of public facilities of local governments damaged or destroyed in such major disaster."³³ The language in the final act was identical to that of H. R. 8396.

The real contention was instead on Section 6 of Hagen's bill, H.R. 8396, which would have provided Federal funding for permanent restoration and replacement in addition to "emergency repair and temporary replacement." Section 6 allowed for Federal grants of up to 50 percent of the estimated cost of restoration of the same size facility, and even beyond 50 percent upon a Presidential finding that the local government's fiscal resources were insufficient to pay its one-half share. The criteria for determining the local fiscal capability were listed as consideration of (1) its tax base and borrowing authority, (2) availability of State and other aid, and (3) availability of other Federal assistance.³⁴

From a review of the hearings in both houses, Section 6 of H.R. 8396 was never seriously considered by members of the committees, apart from its own sponsors. It was rejected at once by the Federal agency officials as going beyond the purpose of this legislation designed to meet emergency needs during and immediately following major disasters. Both the House and Senate Committees unanimously rejected Section 6. In identical statements, they left no doubts as to their position (p. 38 of the House Report, pp. 139-90 of the Senate Report):

"...It would go much beyond the development of emergency measures essential to the preservation of life and property. The committee does not believe that such a program has any place in an authorization bill for emergency relief. Also, the committee believes that restoration of local government facilities during a period in which there is no direct threat to lives and property is a responsibility of the local authorities. The committee, therefore, is unanimously of the opinion that section 6 should be stricken from the bill."³⁵

The logic of the rejection of Section 6 of H.R. 8396 needs to be underscored in a legislative history of PL 81-875. In later

years, Congress was to change its policy with respect to Federal funding for permanent restoration. But for this law, it is important to understand the reasons for limiting Federal assistance to "emergency repairs and temporary replacement". No one explained it better than did Mr. Staats. As he viewed disasters, there are three distinct phases. Phase 1 is marked by the presence of disaster in which there is a direct threat to life and property. Phase 2 is that immediately following in which there are the usual problems of debris removal, transportation, shelter, food, and temporary repairs to enable a return to normal conditions--in which there still exists a threat to lives and property. In the last phase the threat to lives and property is absent. It is during this period that the community undertakes the permanent restoration of its public facilities. Staats laid emphasis upon this distinction: There was a Federal responsibility only during the first two phases during which lives and property were directly threatened, and it was the State and local governments' responsibilities to look after the needs of the third phase.³⁶

Although the language of the law resolved the issue that it was not intended to include permanent restoration, it left, however, some ambiguities as to its scope of application. Subsection 3 (d) provided assistance "by performing on public or private lands protective and other work essential for the preservation of life and property, clearing debris and wreckage, making emergency repairs and temporary replacements of public facilities of local governments damaged or destroyed in such major disaster...". It is clear from the above that only emergency repairs and temporary replacement would be made under the law. But did it also mean that the facilities must also be "essential for the preservation of life and property"? The law does not so state, but when it came to be interpreted by the administering agencies it was so construed. The regulations of the Office of Emergency Preparedness and its predecessor agencies were even more attenuating: "Emergency repairs and temporary replacements shall be made only to these facilities the operating of which is essential to health, safety and welfare".

Subsection 3(d) relates to the funding of Federal agencies under the Act to assure no limitation of the agencies' authority other than as stated here, to carry out the mission described above. The expression, "shall be supplementary to, and not in substitution for," was to be understood as applying against the State and local governments--which is clearly irrelevant in the context of Section 3 of the Act.³⁷ The next statement that "any funds received by Federal agencies as reimbursement ...shall be deposited to the credit of the appropriation..." is simply a bookkeeping procedure that has no further relevance to the purposes of the Act. This sentence and

the one following it disclaiming Federal liability was added by the House Committee³⁸ as suggested in the Department of the Army's review of H.R. 8396 as part of its standing procedure under the U.S. Code.³⁹

"Section 4. In providing such assistance hereunder, Federal agencies shall cooperate to the fullest extent possible with each other and with States and local governments, relief agencies, and the American National Red Cross, but nothing contained in this Act shall be construed to limit or in any way affect the responsibilities of the American National Red Cross under the Act approved January 5, 1905 (33 Stat. 509), as amended."

Commentary:

The intent of including this section in the law to give assurance to the American Red Cross of its rights under its Congressional charter should have been self-evident. But it was not evident to Representative Wadsworth of New York during the House hearings. He asked if the Red Cross might become "subjected to Government control" by its being named to distribute government supplies under this Act. He was assured by Chairman Whittington that General Marshall, President of the Red Cross, and others had reported no objections to the bill, and that the Congressman's fears were needless.⁴⁰

At the time that PL 81-875 was being considered, there were no other voluntary relief agencies that either sought recognition in the law or were comparable to the Red Cross' standing for relief work. The listing of other disaster relief agencies in the law lay two decades away.

"Section 5. (a) In the interest of providing maximum mobilization of Federal assistance under this Act, the President is authorized to coordinate in such manner as he may determine the activities of Federal agencies in providing disaster assistance. The President may direct any Federal agency to utilize its available personnel, equipment, supplies, facilities, and other resources, in accordance with the authority herein contained.

(b) The President may, from time to time, prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of the Act, and he may exercise any power or authority conferred on him by any section of this Act either directly or through such Federal agency as he may designate."

Commentary:

Section 5 is an elucidation of the authorities granted to the President in the previous Section 3 in which he may direct Federal agencies to provide various forms of assistance. Subsection (a) is not dissimilar from the language used in the 1950 Appropriations Act which stated "Provided, that assistance in alleviating hardship or suffering caused by such catastrophe may be rendered through such agency or agencies as the President may designate and in such manner as he shall determine..."

What is especially interesting in this section is that the language employed for the first time the word "coordinate"--"the President is authorized to coordinate... the activities of the Federal agencies in providing disaster assistance."⁴¹

One of the questions relating to this section arose during the House hearing when it was asked whether the bill contemplated creating additional bureaus or if certain designated agencies were intended to administer the Act. Mr. Jess Larson of GSA replied that "The bill does not designate any agency. It is up to the President to designate the agency that will administer the relief at the time that the request is made upon him to do so."⁴² This suggests that at the time the bill was being considered, it was assumed that different Federal agencies would be named by the President, depending on the type of disaster.

Subsection (b) is merely a statement authorizing the President to prescribe necessary rules and regulations--hardly different from provisions that Congress must have authorized hundreds of times before.

"Section 6. If facilities owned by the United States are damaged or destroyed in any major disaster and the Federal agency having jurisdiction thereof lacks the authority or an appropriation to repair, reconstruct, or restore such facilities, such Federal agency is hereby authorized to repair, reconstruct or restore such facilities to the extent necessary to place them in a reasonably usable condition and to use therefor any available funds not otherwise immediately required: Provided, however, that the President shall first determine that the repair, reconstruction, or restoration is of such importance and urgency that it cannot reasonably be deferred pending the enactment of specific authorizing legislation or the making of an appropriation therefor. If sufficient funds are not available to such Federal agency for use in repairing, reconstructing, or restoring such facilities as above provided, the President is authorized to transfer to such Federal agency funds made available under this Act in such amount as he may determine to be warranted in the circumstances. If said funds are insufficient for this purpose, there is hereby authorized to be appropriated to any

Federal agency repairing, reconstructing, or restoring facilities under authority of this section such sum or sums as may be necessary to reimburse appropriated funds to the amount expended therefrom."

Commentary:

The provisions of this section are self-explanatory. In framing a law that would provide financial assistance to local governments towards the repair of their public facilities, it seemed logical that the Act also include authorization and procedures whereby the Federal agencies could do likewise. During the House hearings, a number of Federal agencies had indicated that their funding authorities were not clear--either for aiding States and local governments, or for getting reimbursed for repairing their own facilities. The Department of Agriculture, for example, stated its case:

Not infrequently, on such occasions, facilities owned by the United States were damaged or destroyed, and in course of providing aid, large obligations were incurred in alleviating hardship or suffering. In these circumstances the Federal agencies had no assurance that such damaged or destroyed facilities would be restored nor that reimbursement would be had for expenditures incurred. Deficiency appropriations by Congress afforded the only means of relief and such deficiency appropriations were not always assured nor always forthcoming in time to permit adequate financial planning.⁴³

Mr. Staats in testifying expressed a similar thought, that in the case of the Corps of Engineers, when lives and property could be saved, its legal authority to engage in protective levee work ought not to be in question. As he put it, "We want all the Federal agencies to have authority to spend money at that time in a limited amount. I think it would be clearer if they had that authority under this general legislation."⁴⁴

"Section 7. In carrying out the purpose of this Act, any Federal agency is authorized to accept and utilize with the consent of any State or local government, the services and facilities of such State or local governments, or of any agencies, officers, or employees thereof. Any Federal agency, in performing any activities under section 3 of this Act, is authorized to employ temporarily additional personnel without regard to the civil service laws and the Classification Act of 1923, as amended, and to incur obligations on behalf of the United States by contract or otherwise for the acquisition, rental, or hire of equipment, services, materials, and supplies for shipping, drayage, travel and communication, and for the supervision and administration of

such activities. Such obligations, including obligations arising out of the temporary employment of additional personnel, may be incurred by any agency in such amount as may be made available to it by the President out of the funds specified in Section 8. The President, may also, out of such funds, reimburse any Federal agency for any of its expenditures under section 3 in connection with a major disaster, such reimbursement to be in such amounts as the President may deem appropriate."

Commentary:

Section 7 of the Act, like that immediately preceeding, is ancillary for the purpose of providing flexibility of obtaining manpower for disaster operations. It authorized Federal agencies to use with their consent the services and facilities of State and local governments, and exempts them during the emergency from having to comply with the standing civil service rules. When reviewing H.R. 8396, the Civil Service Commission expressed its view that the provisions were necessary to carry out the purposes of the Act and particularly Section 3. "Since the services to be performed would be temporary in nature and performed in emergencies only," the Commission had no objection to the bill.⁴⁵

The last sentence of the subsection merely restated the standing authorizations, making them applicable to Sections 3 and 4 of the Act.

"Section 8. There is hereby authorized to be appropriated to the President a sum or sums, not exceeding \$5,000,000 in the aggregate, to carry out the purposes of this Act. The President shall transmit to the Congress at the beginning of each regular session a full report covering the expenditure of the amounts so appropriated with the amounts of the allocations to each State under this Act. The President may from time to time transmit to the Congress supplemental reports in his discretion, all of which reports shall be referred to the Committees on Appropriations and the Committees on Public Works of the Senate and the House of Representatives."

Commentary:

It may be noted here that H.R. 8396 did not authorize any specific amount to be appropriated, and that it included the provision for reimbursing the Federal agencies for their administrative expenses. Section 9 of H.R. 8396 stated: "There are hereby authorized to be appropriated such amounts as may be necessary to carry out the purposes of this Act, including necessary administrative expenses."⁴⁶

CHAPTER II

FOOTNOTES

1. U.S. Code Congressional and Administrative News, 82nd Congress, 1st Session, (hereafter abbreviated as USCAN, 2nd - 1st) p. 170. The issue arose from Mr. Foley's inability as head of the Federal Housing Administration to respond to the housing needs of the flood victims under PL 81-875.
2. Here are a few of the statements made in defense of the bill: Representative Cole (Kansas): "The people of Kansas who have suffered the loss of their homes will be heartened to know that Congress can act efficiently and quickly to meet their emergencies... The bill further provides for the erection of temporary shelters for these people until such times as they are able to locate permanent living quarters". Rep. Rees (Kansas): "The resolution further provides for granting authority to the Disaster Loan Corporation to construct temporary housing that will take the place of homes lost by reason of the flood." Senator Shoepfel (Kansas): "This section of the resolution would permit the Government to furnish trailers and other portable housing to meet the temporary shelter needs of families in disaster areas." LH I, pp. 214-221. An unknown number of trailers were provided by HHFA for the flood victims in Kansas under the Presidential declaration of July 14, 1951. This was reported in Federal Disaster Insurance, A Staff Study for the Committee on Banking and Currency, 84th Cong. Nov. 30, 1955, p. 206.
3. LH, II, p. 46-57.
4. LH, II, p. 33-36.
5. Ibid., II, p. 49.
6. Ibid., II, p. 50.
7. The record will show that Congress continued to appropriate additional funds as they were needed. The following funds were voted under the acts as cited during these early years of PL 81-875:
PL 82-80, July 18, 1951, \$25 million
PL 82-202, Oct. 24, 1951, \$25 million
PL 82-326, April 24, 1952, \$25 million
PL 84-112, June 30, 1955, \$3.5 million
PL 84-406, Feb. 14, 1956, \$25 million
PL 84-623, June 27, 1956, \$6 million
PL 85-69, June 29, 1957, \$10 million
PL 85-170, Aug. 28, 1957, \$15 million

In addition to the above, Congress provided funds for related programs such as in PL 83-357 of May 11, 1954, in which the farmer's relief fund to provide emergency feed and seed was increased from \$40 to \$50 millions. An interesting aspect of Congress's protective attitude towards the PL 81-875 fund is related in LH II, pp. 70-77 describing the reasons for increasing the amount of this fund. When it fell temporarily short of money, \$10 millions were borrowed from the President's disaster relief fund, and the agricultural fund was accordingly increased by PL 83-357 to restore the borrowed money. Whether this was due to Congress' desire to maintain control or to preserve the integrity of the President's fund from use for other than major disasters is not known. The debates are not clear, but the fact that monies borrowed from the fund were returned does suggest the latter motive.

Another interesting aspect of funding is that while the original PL 81-875 act authorized an appropriation "not exceeding \$5,000,000 in the aggregate", except for the first appropriation of only \$800,000, the \$5,000,000 limitation has been exceeded ever since (except for the year 1955) without - to the writer's knowledge - the limitation's being formally rescinded.

8. See Harold Seidman, Politics, Position and Power;; Oxford N.Y. 1970.

9. USCCAN, 83rd, 1st, p. 183 and p. 1867.

10. LH II, p. 13; Senate Report, Committee on Agriculture and Forestry, 83rd Cong. 1st session, July 7, Report 501.

11. USCCAN, 83rd, 1st, p. 222.

12. See Anthony F. C. Wallace, "Tornado in Worcester", National Academy of Sciences - National Research Council, Washington, 1956.

13. LH I, p. 243.

14. LH I, p. 225.

15. In the Senate Hearings, Senator Wayne Morse of Oregon contrasted the Government's liberality in its foreign disaster relief policies with its punctiliousness in sticking to the letter of the law for domestic disaster relief: "...it is my observation that too frequently our bureaus are very much agitated over policy when Americans are involved, but we do not seem to have the same concern in regard to the policy if it is applied outside our own borders.... I don't want technicalities raised up as a barrier to come to the assistance

of my fellow man in this country....on the basis of just some of my observations in regard to foreign aid -- when I am of the opinion that too frequently we seem to be perfectly willing to help individuals abroad, but we raise legal technicalities in this country". LH I, pp. 241-242.

16. USCCAN, 87th - 1st, p. 141 and p. 1752.

17. This may be explained by the fact that the bill originated in the Department of the Interior, responsible for government in the Territories. See *ibid.* p. 1752-1760.

18. USCCAN, 88th 2nd, p. 582 and p. 2883.

19. See the volume "Human Ecology" in the series "The Great Alaskan Earthquake of 1964" by the Committee on the Alaskan Earthquake of the National Research Council, National Academy of Sciences, Washington, 1970, pp. 150-168.

20. *Ibid.* p. 155. Senator Anderson concurred with the Bureau of the Budget's view that the Alaskan settlement was excessively generous, but that in view of "preventing desperately needed construction from taking place this year" before the return of the winter season a quick decision had to be reached. One of the features of the program was that by a token payment of \$1,000 the owner of a destroyed home could wipe out an existing mortgage of up to \$30,000.

21. USCCAN, 89th - 1st, p. 139 and p. 1614.

22. USCCAN, 89th - 1st, p. 1326.

23. For the Betsy disaster, 1,809 mobile homes were made available, of which 391 were sold to the occupants. See Vol. I, Administrative History of OEP during the Administration of President Lyndon B. Johnson, p. 112.

24. PL 81-920, approved Jan. 12, 1951, USCCAN, 81st - 2nd, p. 1245. In the twelve pages of print, there is no suggestion that PL 81-920 conveyed a purpose other than preparedness for enemy attack. It was not until Jan. 16, 1953, two years later, that its authority was extended to include administering PL 81-875, which FCDA did for over five years.

25. OEP succeeded OCDM by an act of Congress, PL 87-296, approved Sept. 22, 1961, and received its delegation of authority by E.O. 11051 of Sept. 27, 1962, a year later.

26. The writer of this study is indebted to Mr. Charles H. Beal who was Chief of the Natural Disaster Division of OEP for some interesting insights on the HHFA operation, and particularly on how the law was administered as revealed by two interim reports on the declared flood disasters in Nebraska and Iowa by the Mississippi and the Missouri Rivers in 1952-1953. Mr. Beal at this time was a field engineer for HHFA.

After the declaration was made by the President, it was up to the Agency's field engineers to administer the law. The basic procedures were not too unlike those of the present in handling Public Assistance project applications, except that everything was on a more informal basis. The Agency had issued no manuals of what was eligible or ineligible, and depended on its field staff to exercise good judgment on the "claims", as they were called. The States too lacked any existing organization to supervise their role, and for both Iowa and Nebraska, ad hoc committees were named by the Governor made up of the Adjutant General as Chairman, a State Engineer, the Director of Public Health, the State Superintendent of Public Instruction, and in the case of Iowa, a city manager. A letter was sent by the AG to each community which served as a notice to present their claim applications and a simple description of what was eligible under the Act. Damage inspection surveys were made and when they were completed, the Committee would meet with Mr. Beal and together they screened the requests to determine eligibility of the work, and determined upon an "allocation". Mr. Beal recalls that the committee members liked the procedures and worked with commendable impartiality. There were no time limits under the HHFA procedures but the work was generally finished within a year of the declaration. The extent of Federal assistance under "temporary repair and emergency replacement" was spartan. "Allowable work" extended to clattered bridges as replacements, filling of potholes in roads, no resurfacing, washing of walls (only) to remove dirt, etc. There was no reimbursement for the use of local or county employees on regular payrolls, no replacement of stocks lost or damaged, and each community supplied its own sandbags at its own cost except that the Corps of Engineers supplied about 40% of them. Judging from the files on these two States' experience, the States and the local governments paid about 70% of the total cost. In the case of Nebraska, HHFA refused to release the second allocation of \$150,000 because the State legislature had appropriated disaster relief funds which the agency did not feel were properly utilized.

27. "Federal Disaster Insurance" staff study, *ibid*, p. 205.

28. During the 1960's, The "Federal Disaster Relief Manual" published in a revised edition on August 30, 1963, for the Committee on Government Operations of the United States Senate (the so-called "Humphrey Manual") was the indispensable guide in common use. It was named after Senator Hubert Humphrey of Minnesota, who as Chairman of the Senate Subcommittee on Reorganization and International Organizations (of the Committee on Government Operations) had with his staff compiled it.

29. "Natural Disaster Relief", A Subcommittee Report to the Commission on Intergovernmental Relations by the Subcommittee on Natural Disaster Relief, June 1955. This report was the result of a study prepared at the request of the Council of State Governments and was submitted to President Eisenhower on June 20, 1955. Ibid. p. 26.

30. The following two statements are typical of this view. President Eisenhower in a special message to Congress' Committees on Appropriations and Public Works in reporting on the complete period from the enactment of Public Law 81-875 to June 30, 1954 said: "The transfer of jurisdictional responsibility to the Federal Civil Defense Administration has also served other purposes. It has provided training for State and local civil-defense organizations and has proven that an organized trained civil-defense group is an important asset in a community... The participation of civil-defense organizations in natural disaster operations will increase their capacity and effectiveness to cope with situations which would occur in event of enemy attack". (See Report, 83rd Congress, 2nd Session. Document No. 479.) A similar view was expressed by the Kestenbaum report already cited, as reported to President Eisenhower on June 20, 1955. Ibid. p. 27. "There is an important reason for utilizing civil defense machinery in natural disaster relief operations which most States and Territories have recognized. There is no other way to keep that machinery in working order and be prepared to operate in war disaster situations. It is to be hoped that the civil defense apparatus, so far as its major function is concerned, proves unnecessary, but it would be suicidal to act upon such premises.... Their utilization, therefore, in natural disaster relief operations is not only good training for them but helps to keep them aware of their importance to the community."

31. As has been noted, Congress was relatively unstinting in replenishing the President's fund for natural disasters. FCDA, OCDM and OEP all found their budget requests for civil defense funds severely cut, year after year, largely due to the Texas Congressman Albert Thomas, Chairman of the House Appropriations Committee. Until 1965 - almost a decade and a half after PL 81-875 was passed, Congress held few hearings to assess the

overall effectiveness of that law, except to consider it tangentially in discussing special disaster relief legislation, e.g., Alaskan earthquake, Hurricane Betsy, etc.

32. A few fragmentary statements made during his administration of FCDA by former Governor Val Peterson of Nebraska may or may not be typical, however interesting: He noted during an appropriations hearing that "there may be a tendency developing in the country to rely too much upon the Federal Government". LH II, p. 88. In another connection when Representative Cannon expressed disappointment that FCDA was getting involved in "ordinary everyday disasters", Peterson replied, "I am in complete agreement with you.... I will say that we will try to handle the money... to conserve every one of those dollarsI don't say it with happiness, but we have already been under attack... for being too tight about this money". Then we went on to add that "the philosophy that established that concept did not come from the party with which I happen to be affiliated, politically speaking". Ibid. p. 60.

33. "Natural Disaster Relief, a Subcommittee Report, Commission on Intergovernmental Relations, June 1955", p. 15.

34. Ibid., p. 17.

35. In retrospect, the July 18, 1950, statement of the Federal Security Agency on H.R. 8396, the bill which became PL 81-875, was very revealing. The FSA at that time conducted health and welfare programs that were later incorporated into the Department of Health, Education and Welfare. While the statement was made several years before FCDA took over the PL 81-875 program, it indicates that from its beginning, the disaster relief program was concerned mainly with public facility problems - not people problems.

"The bills seem to place major emphasis on activities peculiar to civil engineering and construction--such as clearing debris and wreckage, making emergency repairs, and performing temporary construction work, and even making grants for permanent reconstruction of public facilities--rather than the all-important problem of public health and those services which directly benefit the individual. The committee may wish to give greater or more explicit recognition to the need for services aiding in the rescue of human beings and in the preservation of human life generally as well as efforts directed toward alleviation of human suffering caused by the disaster. In this connection, the bills might be strengthened by

providing that in dispensing Federal assistance the established Federal-State personnel, facilities, and relationships, as well as the splendid facilities of the Red Cross and other organizations, be used to the fullest practicable extent." LH I, p. 29.

36. See "Federal Disaster Insurance", Staff Study, Nov. 30, 1955, p. 206.

37. This task group was appointed by OEP Director Farris Bryant on Jan. 10, 1967, with George Grace as Chairman. States for which trailers were provided were: Kansas (1951), Alaska (1964), California (1965), Louisiana, Missouri and Colorado, all in 1965. Thus there appears to have been a hiatus of 13 years - if the above information is correct - in which the act was completely dormant.

38. Staff Study, "Federal Disaster Insurance", U.S. Senate Committee on Banking and Currency, November 30, 1955, 84th Congress, 1st Session, pp. 206-207.

39. The following is a summary of PL 81-875 disaster aid from 1953 through 1965 taken from the OEP report to the Department of Housing and Urban Development (HUD) study on flood insurance, submitted to the Senate Committee on Banking and Currency, August 8, 1966, 89th Congress, 2nd Session:

<u>Year</u>	<u>Number of Declarations</u>	<u>Allocations</u>
1953	13	\$ 2,910,451
1954	19	11,363,372
1955	18	22,223,000
1956	19	7,066,000
1957	16	17,452,450
1958	9	5,015,000
1959	8	6,911,500
1960	12	13,650,000
1961	13	17,918,000

<u>Year</u>	<u>Number of Declarations</u>	<u>Allocations</u>
1963	20	\$ 15,920,900
1964	25	105,093,200
1965	25	<u>66,298,000</u>
	Totals	\$355,742,873

40. "Report Relative to the Disaster Relief Act", Report of the President to the U.S. 83rd Congress, 2nd Session, p. 7.

41. OEP Report "Administrative History of OEP During the Administration of President Lyndon B. Johnson", op., cit. p. 94.

42. Section 1710.10 (27FR8789), September 1, 1962, Criteria of eligibility for financial assistance, is quoted below:

Federal financial assistance under Public Law 875 shall be limited to protective work and other work for the protection of life and property, debris and wreckage clearance, and emergency repairs and temporary replacement of essential public facilities of States and local governments, including provisions for temporary housing or emergency shelter.

(a) Protective work. In providing financial assistance for the performance on public or private lands of protective or other work essential to the preservation of life and property, the following criteria shall apply:

(1) When necessary to preserve life, protective and other work shall be limited to the minimum amount necessary to remove the immediate threats to health and safety.

(2) When necessary to preserve property, protective and other work shall be limited to the minimum amount necessary to prevent immediate damage to such property.

(b) Debris and wreckage clearance. In providing financial assistance for clearing of debris and wreckage the following criteria shall apply:

(1) Clearing of debris and wreckage may be accomplished on public property which is essential to the immediate resumption of essential public services.

(2) Clearance of debris and wreckage may also be accomplished under this paragraph upon public or private property, when the public health or safety is endangered or threatened.

(c) Emergency repairs and temporary replacements. In providing financial assistance for making emergency repairs to and temporary replacements of public facilities of States and local governments which have been damaged or destroyed, the following criteria shall apply:

(1) Emergency repairs and temporary replacements shall be made only to those facilities the operation of which is essential to health, safety or welfare.

(2) Assistance in making emergency repairs or temporary replacements shall be limited to providing for the resumption of essential public services until such time as permanent repairs or replacements may be made, except when specifically authorized by the Director pursuant to subparagraph (3) of this paragraph.

(3) A Federal financial contribution toward the permanent replacement of a public facility, in lieu of and in an amount no greater than that estimated to be required for the temporary replacement of emergency repair, may be authorized where such permanent replacement will expeditiously permit the resumption of the essential public service provided by the facility.

(d) Temporary housing or emergency shelter. In providing assistance under this section for temporary housing or other emergency shelter for persons requiring such housing or shelter as a result of the disaster, the following criteria shall apply:

(1) Prior to provision of temporary housing or other emergency shelter a determination of the need for same will be made by the Regional Director after consultation and survey of available facilities by the Housing and Home Finance Agency, The American National Red Cross, and such officials of State and local governments as he deems appropriate.

(2) Assistance for temporary housing or emergency shelter shall be limited to the minimum required to provide shelter during such period of time as would be reasonably necessary to permit the construction or repair of permanent housing in the area, or relocation of displaced persons in permanent housing in unaffected areas.

It should be noted that in the above regulation (c) (1), PL 81-875 was interpreted to apply the word "essential" to all types of public facilities to be eligible for financial

assistance. Reference to the act does not necessarily bear out this interpretation. The word "essential" is found in this context: "(d) by performing on public or private lands protective and other work essential for the preservation of life and property....". It refers to various types of protective actions related to the preservation of life and property, and not to emergency repairs and temporary replacement - in which the word essential is not included. There is little in the legislative history PL 81-875 that sheds light on this subject. But the administering agencies chose to interpret the law in this manner and no one ever seems to have questioned or challenged that interpretation - including Congress.

CHAPTER III. PUBLIC LAW 89-769, FEDERAL DISASTER ACT OF 1966

I. Overview And Background of PL 89-769

Of the several Federal Disaster Relief Acts passed by Congress - of 1966, 1969, 1970 and 1974 - Public Law 89-769 was the least significant in terms of its content. It did include provisions of substance but its importance lies more in the fact that it represents the first effort of Congress to examine overall the Federal disaster relief program and to provide whatever additions to the program that at the time it deemed expedient. As shall be seen, for the first time, the legislative approach was being changed by PL 89-769 to make explicit in the law what the relief provisions would include and as a directive to the administering agency as to how it was to be administered. As in the previous years, the initiative to propose new legislative programs was taken by Congress - this time by the Senate members rather than the House of Representatives which had developed PL 81-875. To the degree that PL 89-769 and the Senate Bill 1861 departed from the assistance provided by PL 81-875, Congress was registering some dissatisfaction with its existing law, which from the expressed views of the Federal agencies seemed adequate and in no need of change.

As in all the Federal disaster relief laws - the previous one and those to follow, PL 89-769, too, had its inception through the occurrence of a disaster severe and big enough to unsettle a sufficient number of members of Congress as to the adequacy of PL 81-875's assistance. Until a disaster of major proportions occurs in a Congressman's district, disaster relief normally has a low priority in competition with all the other public policy matters that daily require his attention. If one can speak of a reawakened interest in disaster relief in Congress at this time, it came about by a gradual buildup of more disasters than usual.

As one Senator noted, "The Alaskan earthquake seems to have been the beginning of a long chain of disasters...from January 1, 1964, until July 1, 1965, 41 disasters have been declared by the President of the United States...extending from Vermont to California, from Florida to Washington". The year 1964 had generated 25 Presidential declarations compared with an average yearly total of 15 in the previous five years. The year 1965 was to prove even worse. The abnormal snow melt in the northern Mississippi River basin in the spring of 1965 caused the President to declare a major disaster for Minnesota on April 11, which was followed immediately thereafter by declarations for Wisconsin, Iowa, and Illinois. The ink on the

Minnesota declaration was scarcely dry when on Palm Sunday, April 11, there occurred a catastrophic sequence of tornadoes in Indiana, Michigan, Ohio, Illinois and Wisconsin. These tornadoes killed 271 persons, caused injury to over 5,000 and damage to property of over \$300 million.² Except for the three major disasters for which Congress had provided special legislation, there had not previously existed a situation to put to the test the adequacy of PL 81-875.

Within a matter of days, a flood of separate disaster relief bills were introduced in both chambers of Congress, both special and general bills. The leadership role for this activity was assumed and remained in the Senate rather than in the House. Even though some House Members submitted companion bills to the Senate bill, they died in committee. The House Committee on Public Works waited until seven months after the Palm Sunday disasters to hold hearings on October 14-15 - took no action, and did not reconvene to consider the legislation until the following year on July 19-20, 1966.

The lead in developing and introducing the new legislation was assumed by Senator Birch Bayh of Indiana, a member of the Committee on Public Works. Within three weeks after Palm Sunday, the Senator introduced his bill (S. 1861) with an impassioned plea for more aid to the disaster victims. Senate interest in the bill is evidenced by its having 28 co-sponsors, later increased to 40. Senator Bayh explained how the bill was developed, and also his pragmatic approach to getting more disaster relief:

I had a group of about 14 Senators represented in my office I asked to come there, and during a period of about two weeks working with the Budget Bureau and working with OEP and the affected agencies, our staff and Dr. Norton and the others did forge out a bill which was acceptable to most all the Senators. We know we can't get 100 percent on something like this but everyone agreed this was the best thing we could do.³

On two issues, Senator Bayh was insistent: that legislation be in the form of general instead of special legislation, and that it view disaster needs comprehensively to include assistance for individuals⁴ as well as for public facilities.

Senator Bayh's bill, S. 1861, sought to establish some greater balance in disaster relief between public assistance and assistance for individuals and families, and to specify in greater detail what the assistance would consist of and how it would be delivered. Although Congress had enacted PL 82-107 to provide for temporary housing, the Senator must have felt that, as

administered, it was inadequate, since Section 5 of his bill provided "Shelter to Disaster Victims". Congress had also passed disaster loan legislation for the Small Business Administration (SBA) and the Farmers Home Administration (FmHA). Senator Bayh complained that these programs were handled on a "business as usual" basis, with the agencies being concerned that they might be preempting business from the private credit organizations.

Senator Bayh's bill, introduced on April 30, was reported out favorably by the Committee in revised form two months later on July 5. It was passed unanimously by the Senate on the same day by a voice vote.

II. S. 1861, the Original Bill and the Senate's Revision

Not much of S. 1861 was left in PL 91-769 when it passed both houses of Congress a year later. One may properly question the reasons for an extensive analysis of a bill most of whose contents were eviscerated. The justification lies in the fact that though most of its provisions were defeated, Senator Bayh persisted in continuing to introduce his bills until 1969 when most of the provisions became part of the Federal Disaster Relief Act of 1969, PL 91-79. Without a knowledge of the legislative processes of S. 1861, it would be impossible to understand the full history of PL 91-79. S. 1861 was the important forerunner of the later legislation, and thus deserves extended analysis.

A few words of explanation are necessary as to the methodology used in the analysis of S. 1861 and the other disaster relief bills that followed. It was found that by classifying the sections of the bill as to their major purpose one can better understand the bill as a whole, particularly since all of the disaster relief bills contained many sections, and were arranged randomly rather than by purpose. Three categories of purpose were established, and each section of the bill is identified as to whether its major purpose was a) individual assistance, (assistance to individuals and families), b) public assistance (assistance to public entities), c) directive/administrative implementation (directed to Government agencies to implement). This arrangement not only facilitates locating a section in the bill, but also assists in understanding to what degree the bill or law emphasized each kind of assistance, i.e., individual, public, etc.

It will be seen from the following analysis that the Senate's revised S. 1861 had made a number of changes from the original bill, but the changes were not out of harmony with its general purpose and design. The principal changes were an increase in the provisions for public assistance, and the addition of another directive/ implementation section.

The bill was introduced as the "Disaster Relief Act of 1965," and all of its sections operated from a common premise of a major disaster as defined by reference to PL 81-875.

A. Individual Assistance under S. 1861

Section 3, Federal Loan Adjustments, was the first substantive section in both bills. In the original, it called upon the following Federal agencies to make loans for a period of up to 40 years at interest rates "not less than three percent per annum": Farmers Home Administration, the Rural Electrification Administration, the Housing and Home Finance Administration, the Veterans Administration, and the Small Business Administration. In the revised bill, the only important change was that the Small Business Administration and the Farmers Home Administration were directed to make loans "without regard to whether the required financial assistance is otherwise available from private sources." With this new proviso, it would no longer be necessary for the loan applicant to hunt a loan from private credit sources before applying for a Government loan.

Section 4 was by all odds the most radical innovation of S. 1861. It is not at all clear from reading the hearings that when he introduced it, Senator Bayh fully understood all its implications--how it would work or what its cost would be. It seems likely that the concept originated in the Alaska Omnibus Act in which the Federal Government joined with Alaska to provide funds under a plan by which grants were made to the mortgagor to pay off his outstanding mortgage obligations on property destroyed by the earthquake. The title of the section in the original bill was hardly revealing of its purpose, viz., "Refinancing Outstanding Mortgage Obligations." This was changed in the revised bill to "Grants to States for Assistance to Homeowners." In the original bill, Senator Bayh proposed a plan of matching grants, 75 percent Federal, 25 percent by the State, "to pay the costs of refinancing such mortgage obligations or real property liens." To be eligible, the State was to submit a plan that included the refinancing of outstanding indebtedness on a single property of up to \$30,000 for up to 40 years at 3 percent.

As originally drafted, the section was loosely drawn, with safeguards included in its implementation. The Bureau the Budget correctly perceived it to be a plan for loss-sharing somewhat similar to that used after the Alaskan earthquake. It was aware of the fact that the language of the section was loosely drafted and that more safeguards were needed for the Government's protection. While far from endorsing the proposal, the Bureau was sympathetic with its objectives. The Bureau's comments are very illuminating on its broad-gauged grasp of the need of some means of indemnifying people for their losses in catastrophic disasters. It suggested that "some form of loss-sharing may be necessary," and wondered if "a constructive approach" might not even involve assistance "...to all property owners suffering disaster losses, whether or not they are in debt or whether or not they are located within Presidentially designated disaster areas."⁶ The Bureau's comments might be interpreted as a recognition of a need for a national program of some types of disaster insurance. The Bureau pointed out the plan's weaknesses and went to work proposing changes. These were approved by the Senate's Committee on Public Works, and appeared in the revised S. 1861 as quite a different proposal. Instead of the 75 percent - 25 percent match between the Federal Government and the State, there would be a 50 percent - 25 percent - 25 percent arrangement among the Federal Government, the State, and the property owner who would bear part of the cost. Where the previous bill's section was loosely worded, merely authorizing the President to make necessary rules and regulations to require reports from the State, the section now required that the State submit a formalized plan with specific requirements to become eligible to participate in the loss-sharing arrangement.

To States interested in applying, the Government would make a onetime grant, paying 50 percent of an amount not to exceed \$250,000 to assist in preparing such a plan. The terms: The State would designate an agency to administer the plan; it would have to include "approved floodplain zoning controls or other similar preventive measures in force"; no grants would cover "any loss for which private insurance is available and collectible in such a State at reasonable price"; grants would not apply to public facilities (since these were covered under PL 81-875); the maximum grant would be \$30,000 for a homeowner and \$100,000 for a business; and an equitable system of appraisal would be developed to establish a fair market value.

Section 5, Shelter for Disaster Victims, is one of the sections of the original bill that remained unaltered in the revised version. Although Congress had enacted a law in 1951 to provide temporary housing (PL 82-107), it had been ineffective. Senator Bayh saw the need of writing a new law that would specify what the

disaster victims are entitled to, and act as a mandate upon the administering agency. If the owner's or tenant's house had been damaged or destroyed as to become uninhabitable, the Government would provide suitable accommodations through "acquisition, acquisition and rehabilitation, or lease." In cases of financial hardship, rentals would be adjusted for a period of up to a year, but in no case would the monthly housing expense be more than 25 percent of the family's monthly income. In the hearings, Senator Bayh seemed to be vague on how this section was to be implemented, but felt that if necessary, the Government would acquire houses now unoccupied, or by other means.

Section 6 in both the original and the revised bill had the title of "FHA Insured Disaster Loans," although its content in the second bill no longer referred to the provision of insurance as a means of facilitating obtaining a loan. In the original bill, Section 6 amended the National Housing Act to provide for insurance of mortgages to owner-occupants of up to \$20,000 for a maximum term of 40 years. In the revised bill, this was changed to amending a different section of the National Housing Act by a citation reference only, and without an explanation of what it involved. In the final Act, PL 89-769, Section 4 explained that the amendment to the National Housing Act gave to victims of major disasters the same rights for housing as "families displaced by urban renewal areas or as a result of other governmental action." This is one of the technical amendments that has been carried forward in the subsequent disaster relief legislation--now found in Section 602(d) of PL 93-288.

Section 7 in both bills was an effort to provide assistance to farmers. In the original bill, it merely offered an extension of time on Department of Agriculture programs. In the revised bill, substance was added by authorizing its Secretary to make grants of up to \$10,000 to enable farmers and livestock men to get back into production.

The last section of S. 1861 was Section 12, Reimbursement for Necessary Emergency Flood Protection. It was included at the instigation of communities on the Mississippi River that had been flooded recently.⁸ It would have reimbursed individuals and companies for their costs of protecting their property against flood damage when their local governments had been unable or had failed to provide flood protection. This was one of the proposals that was eliminated in the revised S. 1861.

Four years later, in PL 91-79, Congress included a similar vision, this time providing for reimbursement to private individuals for the cost of debris removal on their own property. Congress and OEP, in administering it, were to find that it was fraught with possibilities for manipulation and fraud--before it was repealed.

B. Public Assistance Under S. 1861

Section 9 of both bills, Assistance to Unincorporated Communities, was devised by Senator Bayh to correct a situation he perceived to exist in Russiaville, Indiana. This community of some 1,500 people had 90 percent of its homes damaged or destroyed by the Palm Sunday tornadoes.⁹ The section had two parts. The first provided that assistance under PL 81-875 would be made available to include "any rural community or unincorporated town or village" which would give it the same status in applying for disaster aid as incorporated communities. The second part directed the Consolidated Farmers Home Administration to make more insured loans in rural areas for waste disposal systems and other public facilities and to make grants of up to 50 percent if the community could not afford the full cost.

With reference to the first part, OEP held that the proposal was unnecessary - that an unincorporated rural community could use its existing procedure to present its damage claims under PL 81-875 through the counties in which they are located. From testimony presented two years later at Senator Bayh's hearings conducted at Dunlap, Indiana, it is not clear that Russiaville as an unincorporated community possessed public facilities that were eligible under PL 81-875. The Department of Agriculture, on the other hand, was sympathetic and supportive of the second section, and believed that "this amendment would be a major step in filling the need for financial and technical assistance to those communities which cannot obtain such assistance from other sources".¹⁰ Section 9 as stated was included without change in PL 89-769.

Section 10, the longest and most detailed in S. 1861, Elementary and Secondary School Assistance in Disaster Areas, was retained almost intact in the revised bill. Although public elementary and secondary schools could be repaired under the public facilities provision in PL 81-875, it was proposed that they be treated separately and the assistance be administered by the Office of Education in the Department of Health, Education and Welfare. It will be seen that in PL 89-769 this section was replaced by a similar one providing disaster assistance to institutions of higher learning. Between the time when S. 1861 had been introduced and final action taken, Congress had passed

other legislation providing for disaster aid to elementary and secondary public schools.¹¹

Section 11, Highway Assistance in Disaster Areas, proposed that the Government pay 100 percent of the costs of repair or reconstruction of Federal aid highways damaged by major disasters. In the revised bill, an appropriation of \$50,000,000 for the next fiscal year was added. This section failed to be included in PL 89-769, but it marked a step towards getting the Federal Government to accept paying for permanent road restoration costs.

In the revised S. 1861, two new sections for public assistance were added:

Section 12, Priority to Certain Applications for Public Facility and Public Housing Assistance, was a vaguely worded provision which referred to the Housing Acts of 1937 and 1955 which would give priority in the processing of applications from public bodies situated in major disaster areas for low rent housing and for repair and construction of public facilities. This section was included in PL 89-769 as Section 8 with more clear legal references; this time referring instead to the Housing Acts of 1937, 1954, and 1965. This section was renewed thereafter as Section 253 of PL 91-606 and Section 13 of PL 93-288.

Section 13, Authorization for Public Works Expenditures, the last section of the revised S. 1861 derives its importance from the fact that it became the entering wedge to obtaining Federal reimbursement for costs of permanent restoration of public facilities. It consisted of two parts: The first part authorized appropriation of "such sums as may be necessary to repair, restore or reconstruct any project completed or under construction for flood control, navigation, irrigation, reclamation, public power, sewage treatment, watershed development or airport construction which has been damaged as the result of a major disaster." The second part authorized up to 100 percent of the costs to repair, restore or reconstruct any public highway, road, trail, or bridge not on the Federal aid road system determined by OEP to have been damaged as the result of a major disaster. The first part of this section was adopted in PL 89-769 with the Government paying 50 percent of the costs. The latter part was adopted three years later under PL 91-79, with the Federal Government paying 50 percent of the cost. In the following year, a 100 percent cost reimbursement was included in PL 91-606. The first part of Section 13 was an important precursor of subsequent legislation, even though its time had not yet arrived.

C. Directive/Administrative Implementation in S. 1861

the original bill, there was only one section relating to directive/administrative implementation, viz., Section 8, Disaster Warnings. It provided for the utilization of "the facilities of the civil defense communications system" for warning the population of imminent natural disasters. Reference to the hearings shows that, as OEP indicated, the "civil defense communications system is currently being used to provide warnings of imminent disasters."¹²

Section 14, Duplication of Benefits, was added to the revised bill. It directed the head of each agency administering major disaster relief to assure that no one "will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other such program." This statement, a reaffirmation in statutory form of a commonly accepted principle, has been since carried forward in the disaster relief legislation of 1970 and 1974.

III. Public Law 89-769, Disaster Relief Act of 1966

The Senate had shown its readiness to change the disaster relief legislation by passing the revised S. 1861 in slightly more than two months after the Palm Sunday tornadoes. The House, on the other hand, was much less responsive: no report of its Committee, holding no hearings until seven months later and without effect, and then finally, hearings in the following year in July 1966 which eventuated in a House bill that became PL 89-769. Senator Bayh and his colleagues were concerned that the current Congress, now in its second session, would end without enacting any disaster relief legislation. By that time, the concern for disaster relief that existed immediately after the disasters had abated, and the Senate's alternative was to accept PL 89-769, as presented from the House side, or get nothing. The House passed its bill on October 17, and the Senate concurred on the following day. It was approved by President Johnson on November 6, 1966.

Analysis of PL 89-769 here will be limited to a brief summary of the contents of each section of the Act. The summaries are arranged by the category of assistance enacted as above.

A. Individual Assistance under PL 89-769

The number of sections pertaining to individual assistance in the final Act had been severely reduced: from 6 in the original S. 1861 to 5 in the revised bill; and now to 3 in PL 89-769.

Section 3 Federal Loan Adjustments, provided that the three Federal agencies--The Rural Electrification Administration, the Department of Housing and Urban Development, and the Veterans Administration--would make loans for a period of up to 40 years at a reduced Treasury rate of interest--below the Treasury rate but not by more than 2 percent.

Section 4, Federal Housing Administration--Insured Disaster Loans, provided that families in need of housing as a result of a major disaster would be considered under Section 221 of the National Housing Act as families displaced by an urban renewal area under that Act or by other governmental action.

As noted earlier--probably an oversight--the title of the section had not been changed, its contents being irrelevant to "insured disaster loans."

Section 11, Extensions of Time in Public Land Matters, was a new section that permitted the Secretary of the Interior to grant time extensions to persons holding licenses or permits from the Bureau of Land Management who, due to major disasters, were unable to meet the law's normal time requirements.

B. Public Assistance under PL 89-769

Section 6, Assistance for Unincorporated Communities, was unchanged from its original statement in S. 1861. The first part of this section extended statutory recognition to unincorporated rural communities to obtain Federal disaster assistance through usual channels from OEP. The second section empowered the Farmers Home Administration to make loans and grants of up to 50 percent of the cost of repair or reconstruction of waste and water treatment systems in rural areas affected by major disasters.

Section 7, Higher Education Facilities Assistance in Disaster Areas, was also a new section replacing Section 10 in the Senate bill which provided for major disaster assistance for elementary and secondary schools - no longer needed since during the interim Congress had enacted such legislation. This section was included at the suggestion of Congressman Skubitz of Kansas who recalled the damage to Washburn University in the recent Topeka tornado disaster.¹³ Section 7 was in the form of an amendment to the Higher Education Facilities Act of 1963 providing assistance to public institutions of higher education. It departed radically from the emergency repairs and temporary replacement formula of PL 81-875. Upon the determination of the Director of OEP that the facility was in a declared major disaster area, it authorized the Commissioner of Education to provide financial assistance for repairs and restoration as he considered necessary in

he public interest. This could include not only building repair but also equipment, books, and program materials. The institution must of course first demonstrate that it had availed itself of State and other sources of financial assistance, including the proceeds of insurance. An important addition was subsection (e) which authorized SBA to provide disaster loans to private colleges and universities.

Section 8, Priority to Certain Applications for Public Facility and Public Housing Assistance, was unaltered in its basic content from its statement in S. 1861. It established a procedural priority for applications from public bodies in major disaster areas which requested public facility or public housing repair or reconstruction, referencing the Housing Acts of 1937, 1954 and 1965.

Section 9, Restoration of Public Facilities, had a new title, but it was, with minor changes, an enactment of part (a) of the revised bill's Section 13. It provided first for a 50 percent grant for the repair and restoration of an enumerated list of local public facilities--projects of flood control, navigation, irrigation, reclamation, public power, sewerage and water treatment, watershed development, and airport construction and second, for a 50 percent reimbursement of these uncompleted public facilities damaged in process of construction. Where the revised bill had mentioned their eligibility "completed or under construction," the wording was now changed to "when damaged or destroyed as a result of a major disaster, and of the resulting eligible costs incurred to complete such facility which was in the process of construction when damaged or destroyed as the result of a major disaster."¹⁴ Reimbursement would be made to the State or local government acting on behalf of the contractor, less any reimbursement from insurance.

C. Directive/Administrative Implementation in PL 89-769

Section 5, Disaster Warnings, provided for the utilization of civil defense communications for warning the civilian population of imminent disasters.

Section 10, Duplication of Benefits, restated the admonition to the affected Federal agencies that financial assistance under the law, given once was not to be given to the same person again.

Section 12, Coordination of Effort, stated, "The President, acting through the Office of Emergency Planning, shall plan and coordinate all Federal programs providing assistance to persons, business concerns, or other entities suffering losses as a result

of a major disaster...", yet without relieving any agency of responsibility to perform any function vested in it by law. Without saying so expressly, Congress was exhibiting its concern that disaster assistance needed better planning and coordination to overcome some of the complaints that it had heard--unexplained delays, inertia, confusion on policy, etc. It directed the agency further to conduct periodic reviews (at least annually) to assure maximum coordination of such programs and to evaluate progress."

Section 13, Disaster Assistance Study, directed the Office of Emergency Planning to conduct a study with the cooperation of the Departments of the Interior and Agriculture on the best utilization of "air operation facilities" to mitigate forest and grass fires and their effects on life and property.

During the House Committee hearings, Congressman Don Clausen of California had voiced an interest in mitigating forest and grass fires, which may have led to including Section 13 in its bill.¹⁵

Section 14, Effective Date: Although the bill was not approved by the President until November 6, 1966, Section 14 declared the act to be effective "to any major disaster occurring after October 3, 1964". The effective date was recommended by the Bureau of the Budget, determined by the closing date of the previous Congress. This was the first use of a retroactive date, and as will be seen, retroactivity was to become one of the crucial issues in framing disaster relief legislation.

IV. Public Law 89-769 in Perspective

A study of the provisions of PL 89-769 reveals it to be quite a different piece of legislation from S. 1861 in either its original or its revised form. Very little of the content of S. 1861 was enacted, and most of that in lowered assistance. Of its 11 operative sections, six were entirely new: Section 4, Federal Housing Administration - Insured Disaster Loans; Section 7, Higher Education Facilities in Disaster Areas; Section 10, Duplication of Benefits; Section 11, Extension of Time in Public Land Matters; Section 12, Coordination of Effort; Section 13, Disaster Assistance Study. Only three of the operative actions of S. 1861 remained the same: Section 3, Disaster Warnings; Section 8, Priority to Certain Applications for Public Facility and Public Housing Assistance; Section 6, Assistance to Unincorporated Communities. Two of the provisions of S. 1861 were included but in greatly reduced content: Section 3, Federal Loan Adjustments and Section 9, Restoration of Public Facilities.

The interval of a year and a half between Palm Sunday of April 1965 and October of 1966 when Congress passed PL 89-769 was long

enough to have interjected into the House hearings a number of subjects and departmental concerns relating to disaster assistance that became included in the final act. These were the new sections listed above, and with the exception of Section 7 on assistance to institutions of higher education, most of them appear to be of minor importance. Most of the departmental concerns appear to be items that might have been resolved administratively, and had Congress not been involved in considering and resolving S. 1861, it is doubtful if it would have enacted a disaster relief act for these purposes alone. Since a bill was already in the hopper that involved some more substantive changes in the law, Congress decided to include them in its statute. One many wonder if the enactment of PL 89-769 was not due to resolving pressures to placate or mollify the sponsors of S. 1861 into accepting this act as a substitute for their bill.

This is not to diminish the importance of the sections of PL 89-769 that provided additions in disaster relief assistance over that provided by PL 81-875. There were only two such sections, applicable to the public sector, but they represent important breaks from the PL 81-875 formula. The first of these was by Section 7 which provided financial assistance to public colleges and universities, based not on the 1950 minimum formula but on the Commissioner of Education's determination of need - which could include full building facility restoration plus necessary equipment and materials for the conduct of its educational programs. The second was by Section 9 which provided Federal contributions of up to 50 percent for the repair and restoration of a specified list of local public facilities plus up to 50 percent for incompleated public facilities damaged during the process of construction. The assistance provided by Section 9 was a good deal less than Senator Bayh and his cohorts wanted, but it did represent the first major breach in the 16 years of assistance under PL 81-875.

It was in the area of individual assistance that PL 89-769 bore, at most, a pallid resemblance to S. 1861, including but two sections, and both of limited aid for specific situations. Section 3 on Federal Loan Adjustments was largely a refinancing measure and at the U.S. Treasury rate less 2 percent, whereas S. 1861 proposed 40 year disaster loans at a 3 percent rate. Instead of a broad temporary housing provision sought in S. 1861 Section 4 was specifically aimed at assistance to families displaced by the urban development program.

While Senator Bayh was content to accept half a loaf as better than none, he was to persist in proposing new measures for more Federal assistance - for permanent repair and restoration of public facilities, and for broad programs for individual

assistance - mainly long-term loans at a subsidized interest rate and temporary housing for all victims of major disasters who needed it. S. 1861 was a forerunner of PL 91-79 which would be passed only three years afterwards.

S. 1861 marks the turning point in the evolution of change in the type of disaster relief acts that Congress would henceforth consider and produce. From now on, Congress would try to draft its acts in a form that would specify its intent and direct Federal agency activities according to the terms of the law.

S. 1861 reflected this inclination to specify with particulars as to what the law meant to all concerned: to the agencies, a directive and a mandate to carry them out; to the applicant for assistance, some reasonably exact entitlements under the law which the disaster victim could read and understand. Also, in developing this legislation, Congress was countering the views expressed by the Federal agencies which stated that no new legislation was necessary by virtue of their claim that their existing authority was adequate. By passing S. 1861, the Senate was rejecting that view and was establishing that Congress would henceforth determine what disaster relief would consist of and to a greater degree how it would be executed. All this was coming into being during this period-gradually, and somewhat unconsciously, rather than in a single swoop. But inevitably, it was happening.

Since PL 89-769 represents the first really major or comprehensive change in the original legislation, it is worth inquiring why Congress rejected most of the S. 1861 proposals. To be sure, one can at best speculate on some of the reasons: (1) One of the reasons was the general disinterest in the House, as reflected by its delays in conducting hearings on the bill - which in turn affected the immediacy of the need and the mood of Congress - as to necessity. One can generalize that the longer the time lapse from the occurrence of a major disaster, the more remote are the chances of getting Congress to act. (2) Another contributing factor was the indefiniteness of the cost of some of the S. 1861 proposals. The proposal of loss sharing in the grants to the States, based on the 50 percent - 25 percent - 25 percent split had never been "costed out" and its "unknowns" must have scared the Bureau of the Budget even though it was sympathetic to the general idea. Trying out the concept for Alaska in a special act involved limited risk, but applying it in a general law was quite a different matter. In any case, by the time Congress came to consider it over a year later, the proposal had little chance of passing. In the House hearings, Congressman Clausen importuned the House to wait to receive a report due in a

few weeks from the Department of Housing and Urban Development on its overall insurance study of flood loans.¹⁶ In consequence, the House rejected it in its own bill. (3) It will be clear from reading the next Chapter IV on the legislative effects of the Camille disaster that at that time the principal power structure in Congress was not in favor of expanding Federal disaster assistance beyond what was included in PL 89-769. (4) Even though there is no way of measuring the influence upon Congress' attitude in changing the basic legislation of PL 81-875, there can hardly be any doubt but that the opposition of the Federal agencies and mainly OEP, strongly affected it.

The position of the Federal agencies on the proposed legislation is worth examining. There seemed to be an unanimity among them, and especially by OEP, the administering agency, that no additional authority was necessary to administer the program effectively; and indeed, there was little need of any legislative change. Whether they were also reflecting the views of the Administration on these matters is not shown from the record. In any case, they expressed them positively, if not vehemently, and in no ambiguous terms. In most instances, the agencies held to a position that the legislation was unnecessary because their existing statutory authority and their regulations permitted them to accomplish much of what S. 1361 intended them to do. Not only was their authority adequate, they said, but their regulations also permitted the flexibility to accomplish what the bill sought. For example, the loan agencies, SBA and FMHA, asserted positively that they already had the authority in their regulations to make loans on a case-by-case basis in which the applicant need not have previously tried to get credit from private sources.¹⁷

Our interest here will center on the position of the Office of Emergency Planning, rather than the collateral Federal agencies, since it held the giant share of responsibility in providing and coordinating disaster relief. During this period, OEP was run by three successive directors: Edward McDermott, a former Iowa lawyer who came with the Kennedy Administration and stayed until January 13, 1965; former Governor Buford Ellington of Tennessee who served from February 20, 1965, until January 15, 1966; and was followed by former Governor Farris Bryant of Florida who remained until October 9, 1967. We are concerned here only with the views of Governors Ellington and Bryant, under whom OEP functioned during this period, since McDermott had left the agency prior to the 1965 disasters. As will be noted, both directors were forceful men with strong views which directly reflected the agency's position on this legislation.

The position of OEP is clearly stated in the record, both in writing and from verbal statements at the hearings of June 21, 1965, and July 19, 1966. The position of Governor Ellington was relatively moderate and tempered.¹⁸ Although he described his "position on this proposal" as "favorable," he chose to defer to the views of the other departments on most sections of the bill. On closer questioning, however, it was clear that he and his staff preferred to use the agency's existing legal authority which he felt was already adequate to accomplish the bill's purposes. On providing housing, for example, he said that the amended PL 81-875 authority was all that was needed. He strongly opposed having the Government acquire houses, as the bill specified. "I can't see the Federal Government going in and buying housing facilities on a standby basis waiting for a flood to come," he said. Nor did he think that the Federal Government should go beyond the existing formula of temporary repair or emergency replacement. That was a State's responsibility and he believed it could do it best. However, if Congress saw fit to pass the bill, his agency would "carry it forward and administer it on a fair and equitable basis." He even suggested that some other Federal agency or agencies might do it as well. His agency would accept any task this law would assign it, but his statements suggest that he hardly sought the job.

If Governor Ellington's views were a combination of mild opposition and passive acceptance, Governor Bryant's were of positive and intransigent disapproval. Though he was personally unable to appear before the Committee because of prior commitments, he made certain that his views would be presented by his deputy, Dr. Myron Blee, who was directed to speak for him. Dr. Blee was quite adamant that except for two sections in the revised bill--Section 12 allowing for housing priorities, and Section 14 on duplication of benefits--he saw no need for this legislation.¹⁹ OEP's authority now permitted it to do all the things that this legislation tried to do--temporary housing, unincorporated communities' assistance, public school repair and so forth. As for Section 4 which would provide for grants to the States for joint Federal-State and owner loss sharing, he was instructed to request that action on it be postponed until the HUD Section 5 report on flood insurance had been presented and studied.

It would be inaccurate to draw from these brief hearings any inference as to how Congress reacted, or would have reacted to OEP's testimony. But there is no doubt how certain members of the House Committee repounded. Representative Wright of Texas said that he and Congress were "weary" of the agencies' attitude "to study problems to death," of ignoring the fact that the Senate had passed this bill the previous year and not taking any positive positions on it.²⁰ He complained, "...your agency which is primarily charged with the responsibility of directing

emergency planning and health, might have come up with something a little more specific in these areas." Representative Clausen of California, who was not himself in favor of some of the provisions in S. 1861, commented acidly that OEP's positive position suggested to him that "...it would be inappropriate for me to comment on this section of the bill. It appears that you are suggesting that it might be inappropriate to legislate."²¹ Congressman Cramer of Florida, after questioning the OEP representatives, uttered in disbelief, "Out of the entire bill, if we took your position and that of Governor Bryant so far as you are concerned, sections 12 and 14 would be the only ones which justify action this year so far as those within your jurisdiction are concerned." When Dr. Blee, replied, "That is correct, sir," Cramer said, "That would not be much of a bill."²²

It should be overwhelmingly clear from the above exchange that the official position of OEP was that little new disaster relief legislation was needed, and that judging from Congress' acceptance of PL 89-769 and its rejection of S. 1861, the general position of the agency prevailed. PL 89-769 represented the first skirmish in the longer term effort to widen the scope of Federal assistance. Yet it would continue into the next Congressional session. Not only would the assistance be expanded, but it would be designed differently. It would lay out in its specifications in the degree possible, the terms of the assistance - what, to whom, how much, and for how long. From the viewpoint of the disaster victim - the individual or the community affected - the assistance described in the law would be viewed increasingly as entitlements. From Congress' point of view, the statements in the law would be directives and mandates upon the administering agencies. There would be ample room for the use of administrative discretion in writing the regulations and for judgment in applying them. But not again would Congress frame its relief laws in the way they had been written before.

CHAPTER III

FOOTNOTES

1. Congressional Record, July 22, 1965, p. 17866.
2. "Disaster Preparedness", Report to Congress by OEP, p. 28.
v. III, January 1972, Washington.
3. Hearings, House Committee on Public Works, 89th Congress,
2nd Session, July 19-20, 1966, p. 84.
4. The fact that the Congress had recently responded to
providing individual assistance in foreign disasters in "far-
away countries such as we have in Chile on the grant basis at
three-quarters of one percent interest" was cited by Senator
Bayh in support of an expansion of Federal disaster relief.
Congressional Record, April 30, 1965, p. 9097.
5. Hearings, Senate Committee on Public Works, 89th Congress,
1st Session, October 14-15, 1965, p. 10.
6. Ibid., pp. 8-9.
7. Although the Senate's Committee on Public Works reported
S. 1861 favorably, it was not without some uneasiness that it
accepted the temporary housing proposal. In its report, it
stated, "Although this section authorizes outright purchase
of shelter facilities by the Federal Government, the committee
strongly recommends that this authority be used only as a last
resort, and that any shelter facilities so acquired be disposed
of as quickly as possible." Senate Report #451, July 15, 1965,
89th Congress, 1st Session, p. 6.
8. Hearings, Senate Committee on Public Works, 89th Congress,
1st Session, Oct. 14-15, 1965, p. 6064.
9. The travails of Russiaville are related in detail by Robert J
Kinsey, a Russiaville attorney testifying in the Senate.

Hearings conducted at Dunlap, Indiana on June 9, 1967, Hearings,
Senate Committee on Public Works, 90th Congress, 1st Session
pp. 49-63.
10. Hearings, House Committee on Public Works, July 19-20, 1966,
p. 88.

11. Public Law 89-313 of November 1, 1965, 20 USC 241, 79 Stat. 1159.
12. Hearings, Senate Committee on Public Works, 89th Congress, 1st Session, June 21-22, 1965, p. 10.
13. Hearings, House Committee on Public Works, June 19-20, 1966, p. 102.
14. Section 9 in which the Government would pay "not more than 50 percent of the eligible costs" of a public facility restoration ~~for damage or destruction when under construction~~ has involved the Government in considerable and long-drawn litigation, particularly over the interpretation of part (2) of the meaning of eligible costs, when "attributable to changed conditions resulting from a major disaster." OEP regulations defined and limited the "changed conditions" as changed physical conditions due to the disaster, resulting in a protracted suit by the American Rivers Constructors, a California consortium involved in construction affected by the December 1964-1965 floods. The section relating to "under construction" was in fact inserted by California's Congressmen as special legislation. The ARC case was not resolved until November 7, 1977, when Justice Renfrew of the U.S. District Court of Northern California found in favor of the Government.
15. Hearings, House Committee on Public Works, July 19-20, 1966, p. 140.
16. Hearings, House Committee on Public Works, July 19-20, 1966, p. 38.
17. The views of the Federal agencies were expressed by their officers in testimony at the three Hearings: Senate Committee on Public Works, June 21-22, 1965, which also includes the agency comments, pp. 4-24; House Committee on Public Works, October 14-15, 1965; and House Committee on Public Works, July 19-20, 1966. Also, in USCCAN, 39th Congress, 2nd Session, pp. 4143-4164.
18. Hearings, Senate Committee on Public Works, June 21-22, 1965, pp. 45-56. The passages quoted are on pp. 47, 53, and 55.
19. Hearings, House Committee on Public Works, July 19-20, 1966, pp. 132-150.
20. Ibid., p. 138.
21. Ibid., p. 140.
22. Ibid., pp. 143-144.

CHAPTER IV. PUBLIC LAW 91-79, DISASTER RELIEF ACT OF 1969

I. Background:

The full historical antecedents of Public Law 91-79 are generally not known and may be misunderstood. Since it was passed by both houses of Congress on September 18, a month and a day after Hurricane Camille, it is often referred to as the Camille Act. Yet, a study of its history will show that the legislation was already well developed when the hurricane struck. PL 91-79 was to a large degree a belated enactment of the legislation which began with Senator Bayh's bill of 1965, persistently re-introduced in 1967 and 1969. Camille's havoc visited on the politically sensitive and pivotal States of Alabama, Mississippi, Louisiana, Virginia, and West Virginia, which with the many other States that would benefit by the legislation if it were made retroactive, was enough to tip the scales to get the legislation enacted in record time.¹

The legislative history of PL 91-79 has two different complementary threads. The first and doubtless the most important was the legislation introduced now into three Congress (89th, 90th and 91st) by Senator Bayh, aimed at expanding the Federal role in disaster assistance. Within months after the passage of PL 89-769 when the 90th Congress met, on January 17, 1967, he introduced with 36 co-sponsors² S. 438 - a bill very much like the previous S. 1861. It included those sections which Congress had failed to include in PL 89-769: loans for disaster victims at a low interest rate; loss-sharing on the basis of his previous 50-25-25 percent formula; assistance to farmers with grants up to \$10,000; shelter for disaster victims; and permanent restoration of damaged public facilities to include 100 percent of the cost of repairing Federal-aid and non-Federal-aid roads, as well as 100 percent funding of those local facilities listed in PL 89-769.

Senator Bayh held public hearings on S. 438 at Dunlap, Indiana in June and July 1967 and later in Washington. The bill was favorably reported out by the Senate Committee on Public Works but it had failed to pass when the 90th Congress ended its session.

When the 91st Congress met, he again introduced a bill - S. 1685 on January 17, 1969, basically the same legislation but modified by some recent policy changes.

The second thread of PL 91-79 was of an entirely different nature--the actions taken by the California congressional delegation to push for a separate special act--the "California Disaster Relief

Act of 1969." That bill sought to relieve the condition of flooding caused by the rainstorms that began in December and continued through January and February, causing damage estimated at up to \$400 million. House and Senate hearings were conducted on the California legislation March 20-21 and April 1-3 respectively.³ The President had declared California to be a major disaster area on January 26 for 37 of its 58 counties.⁴ The House was disposed to provide relief by special rather than general legislation. It passed H.R. 6508 and sent it to the Senate for consideration on July 9. The Senate, on the other hand, had disregarded Senator Murphy's companion bill, S. 993, and on July 8 had instead passed its own S. 1685 by an uncontroversial voice vote. On July 10, the Senate considered H.R. 6508 and voted to strike out all its contents following the enacting clause and replace it with its S. 1685. It then proceeded to move for a conference with the House managers of its bill.

II. The California Bill, H.R. 6508

H. R. 6508 was patterned to a considerable degree on the previous special disaster relief act of 1965, PL 89-41, the Pacific Northwest Disaster Relief Act for the floods that caused so much havoc for the areas' lumber industry. Although the 1968-1969 flooding in California extended beyond its forested areas, this bill was focused largely on helping the lumber industry with its problems: repairing timber trails, roads and highways, speeding the clearing of the forests of fallen timber before rot and infestation set in, and relieving it of some of the financial burdens caused by the floods. As Congressman Johnson of California argued, a billion board feet of timber was at stake, and, besides, a large part of the damaged timber area consisted of national forest land.⁵ The California bill was not unlike its predecessor, PL 89-41 of 1965.

The contents of H.R. 6508 consisted of five operative sections, and these may be neatly divided into two categories: sections 2, 3, and 4 which directly or indirectly assisted the lumber industry; and sections 5 and 6 which were identical, referring to SBA and FMHA loans programs. Section 2 would at first glance appear to be a type of public assistance intended to augment road repair for the forest industry. It authorized for two successive fiscal years appropriations of not more than \$15 million a year for temporary or permanent road repair for highway facilities not on the Federal-aid system. Section 3 provided for a cost-sharing arrangement between the timber purchaser and the Federal Government that was adopted in PL 89-41, determining by a formula who would bear the road and trail construction and restoration costs, limiting the costs of the former to a maximum of 15 percent, with limits based upon the value of the timber to be removed, and allowing for

cancellation of the contract by the Secretary of Agriculture if the total cost of timber removal proved impractical. As was explained by one of the California House Members, this provision was intended to apply only to those contracts that existed prior to PL 89-41, following which road cost-sharing was written into the contracts.⁶ Section 4 of H.R. 6508 was a procedural regulation authorizing the Secretary of the Interior to allow additional time for public land entrymen to comply with the normal requirements of law because of conditions caused by the flood--a repeat of similar sections in the acts of 1965 and 1966. Other parts of this section made further provisions for the timber industry: Section 3(c), which was the only part of the act that had no termination date, was in two parts. The first part amended the Federal-aid Highway Act of 1968 to provide for the two successive fiscal years ending on June 30, 1970 and 1971. Of its total appropriations allotted for forest development roads and trails, the amount of \$17.5 million would be used solely for road repair and reconstruction of forest roads and trails in California. The second part authorized the Secretary of Agriculture to reduce the time allowed for advertising of national forest timber sales to seven days, to expedite speed of timber removal - also a repeat of PL 89-41.

Sections 5 and 6, however, were of a different order, and they are important for the reason that they revived the idea of loan forgiveness which had begun in the Hurricane Betsy Act PL 89-339 of 1965, and which, as shall be observed, was included in the 1969 legislation, PL 91-79. Section 5 which applied to the SBA and Section 6, to the FMHA, provided that these agencies would make loans in which the borrower would at his option be permitted to cancel up to \$2,500 of losses not compensated by insurance on losses over \$500--either directly when obtaining the loan or in waivers of interest payments for not over a three-year period. The provisions specified also that the loans were to be made "without regard to whether the required financial assistance is otherwise available from private sources." It will be observed that the amount of forgiveness had been increased from \$1,800 in the Betsy Act to \$2,500.

Section 7 of H.R. 6508 limited the duration of the act's effect through June 30, 1969, except for Section 3(c). The last Section 8 cited the act as the California Disaster Relief Act of 1969.

III. Senate Bill S. 1685

The bill that Senator Bayh introduced with 26 co-sponsors on January 17, 1969, was not unlike his earlier bills but with some changes. It's main content was aimed towards more individual

assistance: of its nine operative sections, seven were for individual assistance and two for public assistance. The principal changes were dropping of the 50-25-25 loss-sharing idea occasioned by Congress' having enacted in 1968 the National Flood Insurance Act, and the inclusion of two new sections, one for providing food stamps and the other for disaster unemployment compensation. It also included a provision for the disaster relief of the California timber industry to accommodate the House concerns, as manifested by its passage of H.R. 6508.

A. Individual Assistance in S. 1685

The first three sections of the act were again included in unaltered form: Section 3, Federal Loan Adjustments; Section 4, Grants to States for Assistance to Homeowners and Businesses; and Section 5, Shelter for Disaster Victims. Four more sections for individual assistance were introduced, two of which have been retained in later legislation.

Section 6, Food Stamp Program, authorized the Secretary of Agriculture to distribute food coupon allotments upon the President's determining "that low-income households are unable to purchase adequate amounts of nutritious food," making food surplus commodities part of the provisions of Section 3 of PL 81-875.

Section 7, Assistance to Individuals, authorized for the first time, also, the provision of unemployment compensation to individuals made jobless as the result of a major disaster. Unemployment assistance from private insurance was excepted, and the amounts and duration of such assistance was determined by the unemployment compensation program of the State in which the disaster occurred.

Section 10, Debris Removal, authorized grants to States and political subdivisions for the removal of debris caused by a major disaster "deposited in privately owned lands" which "created conditions hazardous to health and safety."

Section 11, Timber Sale Contracts, incorporated the provisions of the first part of Section 3 of H.R. 6508 which used a cost-sharing formula to aid the lumber industry in facilitating the removal of fallen timber.

B. Public Assistance in S. 1685

The provisions for public assistance in S. 1685 were relatively minor, and only two in number. Section 8, Clearance of Lake Contamination, authorized grants to a State or its political subdivisions to remove debris in a lake in which contamination hazardous to health and safety had resulted from a major disaster.⁷

Section 9, Fire Control, authorized the making of grants to assist "in the suppression of a fire or fires on State or privately owned forests or grasslands which threaten destruction of such proportions as to constitute a major disaster" (emphasis added). It will be recalled that Section 13 of PL 89-769 provided for an investigative study of forest and grass fires to be conducted by OEP with the cooperation of the Departments of Agriculture and the Interior. Section 9 of S. 1685 was presumably the legislative consequence of the Forest and Grass Fires Report to Congress dated May 19, 1967.⁸ It is important to note here that this is the first addition of an operative section for disaster relief which provided assistance before the disaster occurred. Public Law 81-875 authorized the President to declare a major disaster where it "is or threatens to be of sufficient severity and magnitude" (emphasis added), but Section 9 is the first use of allowing pre-disaster assistance in a separate operative section.

There were no directive/administrative sections in S. 1685. The last Section 12, Effective Date, declared that the act would apply to all major disasters occurring after December 31, 1968.

As in the two previous Congresses, the Senate body acted favorably to the Bayh bill: its Committee on Public Works reporting it on June 25, and the Senate passing it by voice vote on July 3. Two days later, the Senate considered the House bill for California's disaster relief and voted to substitute its own bill for H.R. 6508, and requested a conference committee meeting with the House managers.

One may speculate on the chances of enactment of this legislation had the Camille Hurricane not occurred on August 17. The probabilities are that each chamber might have procrastinated in its negotiations. But with the great devastation visited on the States of Alabama, Mississippi, Louisiana, Virginia, and West Virginia and the widespread suffering caused by Camille, there was not time for dawdling or further delay. The conference committee rendered its report⁹ on September 17, and on the following day, both chambers accepted its recommended bill. The President signed PL 91-79 into law on October 1, 1969.

IV. Public Law 91-79, Disaster Relief Act of 1969

PL 91-79 was the most comprehensive disaster law enacted to this date. It expanded the scope of Federal aid in both the public and the individual assistance categories, but mainly the latter. It also added two new features in directive/administrative implementation--State planning grants and the appointment of a Federal Coordinating Officer (FCO). It was made up of 14 operative sections, of which eight were for individual assistance,

two were for public assistance and four were directive/administrative in nature. Only four sections of the act were declared to be permanent; all the others were temporary, to be in effect only until December 31, 1970, allowing time for Congress to pass permanent legislation. Although most of PL 91-79 was thus temporary legislation, it created the momentum and established the pattern for PL 91-606 which replaced it at the end of the following year.

A. Individual Assistance in PL 91-79

The significance of the new individual assistance features in this new law can best be felt when one scans this comprehensive list and then compares it with what were understood to be the limits of Federal disaster relief in PL 81-875. The language of Federal "supplementary" assistance was retained, but it now included types of assistance that went well beyond the emergency phase of disaster in its expanded assistance for both individuals and communities.

Section 3, Highway Repairs and Timber Sale Contracts, incorporated into the act the former Section 3 of the California bill that was intended to aid the lumber industry. Hurricane Camille's damage to forest lands in the Gulf Coast and in Virginia and West Virginia increased the number of interests who wanted this legislation.

Section 4, Entry on Public Lands, provided the authority in Section 4 of H.R. 6508 to the Secretary of the Interior to give additional time to public lands entrymen to comply with the requirements of law.

Sections 6 and 7 provided for Disaster Relief Loans--Section 6 by the SBA, and Section 7 by the FMHA, and both were written in identical language, much of it taken from the same numbered sections of H.R. 6508, but with important changes. As written in the act, the precise intent of the sections are unclear. Nor is the House Conference Report entirely illuminating. The act established two categories of borrowers affected by a major disaster: those who are eligible for forgiveness and those who are not. The first category of borrowers were those persons who could not establish bank credit and who, at the borrower's option would be forgiven up to \$1,800 on losses over \$500 of interest and/or principal, and would be permitted to defer payments of interest or principal during the first three years of the term of the loan. It should be observed that the amount of forgiveness had been reduced from \$2,500 in the California bill to \$1,800, the amount first established in the special Hurricane Betsy Act. The second category of borrowers were those persons who, in Senator Bayh's words, "have some capability

of assisting their own recovery because of the availability of private credit"10 those to whom the SBA and FmHA credit resources were available "without regard to whether assistance is otherwise available," and who could secure loans at the Treasury rate of obligations having 20-year maturities, and who would be ineligible for loan cancellation or forgiveness.

It is worth noting here that when the SBA and the FmHA provisions were written into the next disaster relief law, PL 91-606, the separate categories of borrowers and terms of loans were abolished. Under the 1970 legislation, all borrowers were made eligible for forgiveness and all could borrow at the standard three percent rate.

Section 10, Temporary Dwellings, clearly reflects the compromise arrived at in Senator Bayh's efforts to secure temporary housing for disaster victims. Instead of allowing the "acquisition, acquisition and rehabilitation, or lease" of mobile homes and other types of dwelling as in S. 1685, PL 91-79 restricted the Government to: (a) using unoccupied housing-owned by the Federal Government and local public housing agencies; and (b) leasing mobile homes and other housing. In all instances however, the authority provided was limited to leasing, not purchase or acquisition as in Bayh's bill. In the use of mobile homes, the sites were to be furnished by the State, local government, or owner-occupant under rules and regulations prescribed by the President, but in no case, to be charged to the Federal Government. In case of financial hardship, rentals for a period not beyond twelve months were to be adjusted or waived and not to be in excess of 25 percent of the family's monthly income. Dwelling accommodations would be made available only if so damaged as to be uninhabitable.

Section 11, Food Coupon Allotments, was included in the identical language in which it was presented in S. 1685. These were to be made available upon terms prescribed by the President to low-income households unable to purchase adequate amounts of nutritious foods, the Secretary of Agriculture being authorized to make the distribution.

Section 12, Unemployment Assistance, provided unemployment compensation for the first time in Federal disaster relief legislation. The language here was restated from the corresponding section in S. 1685 but with no substantive changes in its terms: for up to one year, and in accordance with the policies of the State unemployment law.

Section 14, Debris Removal, was the first amplification of the original provision for debris removal in PL 81-875. It was occasioned by the huge amount of debris strewn over the countryside by

Hurricane Camille. PL 81-875 had simply provided for "clearing debris and wreckage" with no further instructions as to its implementation. Section 14 authorized the making of grants to any State or political subdivision for the purpose "of removing debris deposited on privately owned lands and or in privately owned waters as a result of a major disaster", when it was determined "to be in the public interest" by the Office of Emergency Preparedness (OEP). The section further provided for payments to be made "to any person for reimbursement of expenses actually incurred by such person in the removal of such debris, but not to exceed the amount that such expenses exceed the salvage value of such debris."

The latter provision for making grants payable to the owners of the land for their expenses of removal was a new concept that Congress was soon to learn was unmanageable. The amount of debris to be cleared was vast, to such an extent that there was no way except after the fact to determine what the actual expenses should have been. Neither the States nor the local governments were able to assess debris removal costs so as to prevent frequent resort by land owners to "sweetheart contracts" in excess of actual costs. When Congress revised the act in 1970, Section 224 in PL 91-606, the system of reimbursement to the land owner was eliminated.

It may also be noted that by some misadventure, in drafting Section 14 - if it was its intent that its scope be fully inclusive - Congress failed to include authority for debris removal in or on publicly owned waters.

Senator Bayh's bill in Section 8, Clearance of Lake Contamination, had provided for reimbursement to a State or its political subdivision for removing debris in a lake in which contamination was hazardous to health and safety. Its omission from section 14 is without explanation - probably an oversight. This too was corrected in Section 224 in PL 91-606 when the law was made to read "...from publicly and privately owned lands and waters".

B. Public Assistance in PL 91-79

There were only two sections in the new law that augmented the existing provisions for public assistance.

Section 2, Highway Repairs, represented the first extension to obtaining Federal payment for permanent repair and restoration of streets and roads not on the Federal-aid system. The section was peculiarly phrased: "No funds shall be allocated under this section for repair or reconstruction of such street, road or highway facility unless the affected State agrees to pay not less than 50 per centum of all costs of such repair or reconstruction."¹¹

Section 13, Fire Suppression, adopted without change the language of the previous Section 9 of S. 1685 which simply authorized the President to make grants or loans to any State to suppress forest or grass fire on publicly or privately owned lands which "threatens such destruction as to constitute a major disaster."

C. Directive/Administrative Implementation in PL 91-79

PL 91-79 included four operative sections for its directive/administrative implementation.

Section 5, Bureau of Reclamation Overhead Costs, was a technical provision which repealed a section of the 1967 Public Works Act which exempted that agency from having to reimburse OEP for costs incurred for PL 81-875 disaster relief.

Section 8, State Disaster Planning, provided for the first time State planning grants which have been retained in subsequent legislation. The President was authorized to make grants of up to \$250,000 to any State which applied, for which the Federal share would not exceed 50 percent. The grant was to be used "in developing comprehensive plans and practicable programs for assisting individuals suffering losses as a result of a major disaster." The act specified that to qualify for the grant, the State "shall designate an agency specially qualified to plan and administer such a disaster relief program". The State plan was required to be submitted not later than December 31, 1970, "which shall (1) set forth a comprehensive and detailed State program for assistance to individuals suffering losses as a result of a major disaster and (2) include provision for the appointment of a State Coordinating Officer to act in cooperation with the Federal Coordinating Officer required by Section 9 of this Act." It may be noted that none of the previous bills sponsored by Senator Bayh had suggested the need of a State Coordinating Officer. The need of a State counterpart was a logical conclusion given the decision in Section 9 to establish a Federal Coordinating Officer.

The reader's attention is called to the exact requirements of Section 8 - probably a mistake in the drafting - which may have contributed to frustrating achievement of its objectives. The requirement of submitting a State plan in a year and a quarter from the date of enactment was palpably not realistic, given the delays in publishing agency regulations, providing matched funding, and accomplishing a State plan. The other requirement of developing a comprehensive and detailed State program only "for assistance to individuals suffering losses as a result of a major disaster" was obviously too narrow an objective, as was learned later. The wording was taken from Senator Bayh's earlier

bills, S. 438 and S. 1861 in which the State plan was to be part of the earlier loss-sharing program under the 50-25-25 percent formula.¹² The correction was made later in Section 206 of PL 91-606 in which the State plans were to include the broader purposes of assistance to businesses and local governments.

Section 9, Federal Coordinating Officer, was a new concept in administering disaster relief. It provided that immediately upon his declaration of a major disaster, the President was to appoint a Federal Coordinating Officer under OEP who "shall be responsible for the coordination of all Federal disaster relief and assistance." The FCO's task would be to "establish such field offices as necessary for the rapid and efficient administration of Federal disaster relief programs," and "shall otherwise assist local citizens and public officials in promptly obtaining assistance to which they are entitled."

Section 9 may be viewed as an extension of several previous delegations: first, the delegations contained in the earlier Executive Orders by which the administering agencies (FCDA, OCDM, and OEP) were specifically authorized by the President to coordinate disaster relief; then, followed by Section 12 of PL 89-769 of 1966 in which OEP was specifically named to "plan and coordinate all Federal programs" to provide assistance in major disasters. Section 9 probably reflected the dissatisfaction of Congress that there still was a need to pinpoint the responsibility in the field upon a single individual, the Federal Coordinating Officer. The idea originated with Senator John Sherman Cooper of Kentucky¹³ who felt that with the multiplicity of Federal agencies engaged in disaster relief, some one person must be made responsible for coordinating their efforts and likewise be made responsible for delivering the assistance to the people as the law requires. It will be noted in later chapters of this legislative history that the concept of the Federal Coordinating Officer would be retained and further amplified, and particularly that there would be a growing emphasis on his relationships with the State Coordinating Officer (named in Section 8) in coordinating Federal-State disaster response.

There is one aspect here that warrants special notice. It was observed in the previous chapter that in changing its disaster relief laws from a broad and indefinite delegation to the administering agency and in specifying in the laws what assistance was to be given, Congress was moving towards building a system of legal entitlements. Here, in Section 9, Congress was now stating entitlement as a fact: that the FCO's duty was that of "promptly obtaining assistance to which they are entitled". Subsequent legislation was to continue this language without change.

Section 15, Effective Date, usually merely a notation of the time the act is passed, in the case of PL 91-79 was the most significant single section of the act. It did a number of things: (1) It made the assistance for major disasters retroactive to June 30, 1967, thus adding the interests of States with recent declared disasters to those of the Camille States to assure passage of the act. (2) It limited the terms of many of the new sections of disaster assistance only through December 31, 1970, making PL 91-79 a temporary act for the most part. (3) The sections that were retained as permanent were: Section 5, Bureau of Reclamation Overhead Costs; Section 8, State Disaster Planning; Section 9, Federal Coordinating Officer; Section 13, Fire Control.

V. PL 91-79: Why did it happen?

It has become customary to refer to PL 91-79 as the Hurricane Camille legislation, and in a sense, it is true. PL 91-79 would probably never have passed when it did had not the severe and widespread damage caused by Camille brought it to the fore. The usual explanation for its passage was that the disaster was so severe and of such a magnitude that additional kinds of disaster assistance were imperative under the circumstances. Yet, as this history has described, virtually the same legislation had been presented to the past three Congresses following many other major disasters without it's having taken action to pass it. Why did it happen now? Was it due now only to the magnitude of the Camille disaster?

Part of the answer is supplied by the fact that Congress had resolved the differences between House and Senate by making PL 91-79 a temporary law, allowing most of the new types of assistance to lapse after December 31, 1970. Congress would have a year and a quarter to frame new legislation, and that would be time enough to agree on a new law.¹⁴

The commonly accepted explanation that PL 91-79 was enacted because of the unusual exigencies caused by Camille's effects deserves more extended study. There is no gainsaying that Camille's damage was extraordinary. Over 250 persons were killed by it and property damage approximated a billion and a half dollars. Why was not Camille's damage resolved by Congress' again passing special legislation for those States - as in the three special acts of a few years before? As a matter of fact, the Senators of those States did introduce special disaster relief bills. On September 3, special bills were introduced by Senators Eastland and Stennis of Mississippi, Sparkman and Allen of Alabama, Ellender and Long of Louisiana,

Byrd and Spong of Virginia, Thurmond of South Carolina, and Randolph and Byrd of West Virginia.¹⁵

Why did not Congress settle upon using special legislation for Camille? The answer is probably to be found in the fact that Senator Bayh, still intent on framing general instead of special legislation, went about forming a coalition of support for his bill. In introducing the conference committee revised bill S. 1685, he acknowledged the help that he received from many Senators - listing them by name, including the Chairman of the Senate Committee on Public Works (Randolph of West Virginia) and ranking members of other committees. Even though not members of the conference committee, they "sat in on the conference" and helped resolve the differences with the House. He remarked that "while it has been my good fortune to sit on more than one conference committee.... I can honestly say that I have never been a member of a conference which did more to resolve major differences between the two Houses...". They "....were extremely helpful in compiling data to be of assistance, not only to their States and their citizens, but also to those throughout the country who may similarly be affected...when the final hour came for filing our decision, we had tremendous cooperation from the conferees for the House of Representatives, who put aside the differences they had with the original Senate bill, as we tried to do with our differences with their legislation, and we proceeded constructively."

It seems clear from the above that not until Senator Bayh was able to put together that political coalition favorable to his bill that it had a chance of overcoming the opposition of the last five years. And that came about only because of the circumstance that this particular disaster - Camille - had impacted on the group of States that at this particular time uniquely controlled positions of leadership in the committee structure in both chambers, but mainly in the Senate. At that time, the southern leadership occupied ten of the chairmanships of the Senate standing committees.¹⁶ Once these leaders decided to support expanded Federal disaster relief, opposition to the legislation melted away.

The statements made by these representatives in urging passage of PL 91-79 are of interest additionally in that they may well have committed themselves in principle to the broadening of relief measures on a permanent basis after PL 91-79 had expired. Even though they were intended only to help pass this particular bill, their net effect was perhaps to evince a change of position that would help to make permanent the provisions of assistance that in this law were but transitory:

By Chairman Colmer of the House Rules Committee:¹⁷

"...there is a question in my mind whether the relief and assistance provided is sufficient to take care of this tragedy insofar as the Federal Government can participate. If it proves to be inadequate, then we will just have to proceed with further and additional legislation..."

By Congressman Cramer of Florida:¹⁸

"Finally, there is the recovery stage, during which devastated areas are rebuilt, rehabilitated, and made productive again. Where public facilities have been wrecked, utilities destroyed, the industrial base disrupted, and housing wiped out, the restoration phase can prove a massive undertaking requiring billions of dollar to fund and years to complete.

"Until comparatively recently, the role of the National Government in disaster relief was relatively minor. We left the burying of the dead and the picking up and putting together of the pieces pretty much to State and local authorities and to the victims themselves. While Washington overintruded in many areas, disaster relief, I regret to say, was not one of them. But, over the past decade, a change in thinking has occurred. (emphasis added). Congress has begun to extend the Federal role and increase the Federal contribution in order that those whose homes and livelihoods have been destroyed may be helped to recover as quickly and expeditiously as possible."

By Senator Stennis of Mississippi:¹⁹

In referring to the fact that the tax base of some of the Gulf Coast communities had been destroyed by Camille, he said:

"Grants and loans are going to be necessary, and there must be a minimum delay if we are going to prevent a chaotic situation at local levels of government. I trust this problem will be thoroughly explored, in hearings, as soon as possible, and appropriate legislative relief will be recommended.

"I am certain that this bill will be a first, long step down the road of recovery. It will leave us more steps to be taken, and these must be examined, but in this bill, together with other existing authorities, we have the framework for a reconstruction and rehabilitation plan."

By Senator Byrd of Virginia, having reviewed what was being done for the damaged area in Virginia by the various Federal agencies:²⁰

"But this is only the beginning. The difficult task of rebuilding lies ahead. It will not be accomplished in a matter of days, weeks, or even months. Many families will need assistance to survive through the winter months.

"The long range recovery will require a great deal of individual sacrifice. Special relief funds have already been established in many counties."

By Senator Eastland of Mississippi:²¹

"Mr. President, the far-reaching provision of this legislation as outlined by Senator Bayh, Senator Randolph and Senator Spong are a credit to the Congress and to the country and certainly create a broad foundation for the launching of our rebuilding and rehabilitation projects."

But while in both chambers, the proponents of PL 91-79 were engaged in exchanging compliments with fellow Members for a job well done, there was one voice that proposed for the first time that Congress ought to consider how disaster damage might be prevented. Senator John Sherman Cooper's remarks to disaster prevention and mitigation are worth quoting, being the first such reference in Congress' annals.²²

"At present time, the Senate Committee on Public Works is holding hearings on the Hurricane Camille damage in parts of Virginia and flooding problems in parts of the Midwest and in Aclandria, across the Potomac. The testimony reveals a number of things of importance to the Senate in its consideration of this act. Disaster assistance cannot come too quickly and in too great quantities to those whose homes and lives have been disrupted or destroyed by rampages of nature. More importantly, however, the hearings have revealed the need for strong action by local and State governments, as well as Federal consultation, in protecting people and resources from flood and storm damage through the adoption of sound policies of land and resource management. Instead of applying band-aid like assistance post facto, we should increasingly consider techniques of prevention before damage is created. It is my belief that this is

the direction in which we must turn in our future consideration of disaster relief. To a great extent much of the damage we seek to relieve in the passage of this act, as in the passage of past disaster relief acts, was avoidable, had local and State governments exercised their responsibilities in the land use and management arenas."

CHAPTER IV

FOOTNOTES

1. If a new disaster relief act was to be framed with a retroactive date, there were many States with recent major disaster declarations that would be ready to accept its benefits. In 1967, there were 24 declarations with 20 States; in 1969 to October 1 when PL 91-79 was passed, 27 declarations for 26 States. Senator Bayh confirmed their involvement in getting the law passed - p. 12 of this chapter.
2. See Hearings, Senate Committee on Public Works, 90th Congress, 1st Session, June 9, 1967, at Dunlap Indiana.
3. See Hearings, California Disaster Relief Act of 1969, House of Representatives Subcommittee on Flood Control of the Committee on Public Works, 91st Congress, 1st Session, H.R. 6508, (H.R. 6509--the identical bill), March 20 and 21, 1969; Hearings, California Disaster Relief Act of 1969, Senate Subcommittee on Roads of the Committee on Public Works, 91st Congress, 1st Session S. 993, April 1 and 3, 1969.
4. The California floods proved to be the most costly declared disaster up to this time in terms of PL 81-875 funds, a total of \$94,290,906 having been obligated. The next most costly as of this date was the Alaska earthquake. \$35,725,230, but it must be remembered that about five times that amount was supplemented by the special Alaska earthquake act of 1964.
5. Congressional Record, September 13, 1969, p. 26016.
6. *Ibid.*, p. 26015.
7. Senator Bayh's Hearings at Dunlap, Indiana had disclosed a condition of contamination in lakes in Michigan caused by the Palm Sunday tornadoes, now-hazardous to health and safety. The lakes were not strictly a public facility in the usual meaning although they came under public jurisdiction--and thus were considered ineligible for debris clearance if their use was mainly for swimming and recreation. See hearings, Senate Committee on Public Works, 90th Congress, 1st Session, June 9, 1967, pp. 76-81.
8. Forest and Grass Fires, A Report to the Congress, by OEP, pursuant to PL 89-769, Section 13, 90th Congress, 1st Session, Document No. 30, May 19, 1967, Washington.
9. Conference Report, Disaster Relief Act of 1969, House of Representatives Report No. 91-195, 91st Congress, 1st Session, September 17, 1969.

10. Congressional Record, September 18, 1969, p 26091. Since Senator Bayh best explained the obscurities in the language of the act, it is quoted below:

DISASTER RELIEF LOANS

"Section 6 provides that the Small Business Administration, on 3 percent disaster loans to those who cannot establish bank credit, shall, at the borrower's option, cancel up to \$1,800 of interest, principal or any combination thereof on a disaster loan. SBA also is authorized to defer interest or principal payments during the first three years of the term of the loan regardless of the borrowers's financial situation.

"In addition, in order to assist those who are severely affected by a disaster but who have some capability of assisting their own recovery because of the availability of private credit, the conferees make the following recommendation: that the SBA make loans for the repair, rehabilitation or replacement of lost or damaged property without regard to whether financial assistance is otherwise available, provided that such a loan will carry interest charges at a rate equal to the cost of the money to the United States. This aspect of the loan program would therefore not burden the Federal Treasury. Further, no such loan would be eligible for forgiveness or deferral of payments.

Finally, the SBA is authorized to refinance mortgages or liens outstanding on destroyed or damaged properties. However, this is not intended to permit cancellation or deferral if the loan being financed was originally made under the first paragraph of this section and part of such loan was already cancelled. This means that no borrower could receive two cancellations on the same loan. He would not be barred from two such cancellations, however, if each resulted from damage or destruction in a different disaster."

Of related interest also is the upper limits of a loan from SBA and FmHA, which by agency regulation had been established at \$30,000 for a homeowner and \$100,000 for a business. In both the House Conference Report and in the Senate, the proponents of PL 91-79 inveighed against these limits as "unrealistic," but apparently to no avail. See Congressional Record, September 18, 1969, pp. 26097-26098 for remarks by Senators Eastland and Stennis.

11. The origin of the requirement for the State to agree to assume its 50% share of the costs is unknown, especially since most applicants were local governments which could apply independently for Federal aid for street and road repairs. OEP's regulations for administering PL 91-79, issued December 18, 1969, accepted the Section 2 requirement and in paragraph 1715.4 authorized action

"...when the State so requests and agrees to pay not less than the 50 per centum of all costs of such repair and reconstruction."

12. In retrospect, it is difficult to understand why Senator Bayh's language taken from his earlier bills was not changed since the need of a broader objective seems so transparent, and since the earlier proposal of 50-25-25 was now extinct. See Disaster Relief, Senate Report 91-280, 90th Congress, 1st Session, June 25, 1969.

Congressional Record, July 8, 1969, page 18559; also in Senate Report No. 91-280, Disaster Relief, 91st Congress, 1st Session, June 25, 1969, page 4. It is clear that when Senator Bayh drafted the State plans proposal he was cognizant of the fact that they would be developed only in those States which were to participate in the broader program of disaster loss-sharing. In the Hearings held at Dunlap, Indiana, he stated, "...the most important section of S. 438 which provides grants to States for disaster relief, would become operative only in those States developing their own comprehensive program of assistance for those who have suffered property losses in a major disaster." Hearings, Senate Committee on Public Works, 90th Congress, 1st Session, June 9, 1967, p. 4. If the Senate Committee fully understood the implications of the language of Section 8, it is hardly apparent in comment: "It is hoped, as a result of such comprehensive plans and practical programs, that an effective State disaster relief program could be developed which would eliminate the need for further Federal legislation in cases of disaster emergencies." Congressional Record, July 8, 1969, page 18559, and Senate Report 91-280, p. 4.

13. Congressional Record, September 18, 1969, p. 26095. Senator Cooper's statement on Section 9 is quoted in full.

"One of the difficulties of administering the disaster relief program is the proliferation of Federal programs of assistance. Different agencies and departments of the Federal Government provide aid to individuals, businesses, and governments, both local and State. This multitude of programs creates a problem for those needing assistance because information about them may not be coordinated. The individual agencies make information available about their programs, but the individual who needs help often does not know what agency can give him the assistance he needs. In order to meet this problem, I suggested an amendment which I am glad was adopted by the conference. It appears as Section 9 of the final version of the act and provides that immediately upon designation of an area as a major disaster area, the President will appoint a Federal Coordinating Officer to coordinate 'all Federal disaster relief and assistance, establish such field offices as may be necessary for the rapid and efficient administration of

Federal disaster relief programs, and shall otherwise assist local citizens and public officials in promptly obtaining assistance to which they are entitled.' I hope that the application of this provision will be helpful."

14. It is interesting to observe that on the day following the Conference Committee Report, Senator Bayh was already thinking of holding hearings - preferably joint hearings - that would lead to establishing permanent disaster relief legislation. See his statement in Congressional Record, September 18, 1969, pp. 20089-90. The following is expressive of his views:

"I should also point out that there was general agreement on the overall philosophy that we wanted not only a national bill, applicable to any part of the Nation that might be confronted with a disaster, but also that this should be a bill that had no terminal point; so that as soon as the Senate and House of Representatives committees are able to do so, they can hold hearings, hopefully joint hearings. At that time, it is hoped that the terminal date agreed upon can be removed, so the States will not have to come to the Senate, and the House of Representatives after each disaster, but rather, when disaster strikes, there will be legislation already on the books to deal with it." Ibid., p. 20089.

Chairman of the House Committee Jones corroborates this view in explaining that while the House conferees thought the "Senate provisions had a great deal of merit" he insisted at that time that additional hearings on a general bill should be held. "However, during the period of our discussions, additional disasters occurred which convinced the House conferees that we could not wait for additional hearings." Congressional Record, September 18, 1969, p. 26011.

15. Congressional Record, September 18, 1969, p. 26091.

16. Washington Post, March 26, 1978, article by David S. Broder, "Eastland: an End of an Era".

17. Congressional Record, September 18, 1969, p. 26018.

18. Ibid., p. 26014.

19. Ibid., p. 26098.

20. Ibid., p. 26099.

21. Ibid., p. 26096.

22. Ibid., p. 26095.

CHAPTER V. PUBLIC LAW 91-606, DISASTER RELIEF ACT OF 1970

I. A Profile of the Legislation to 1970

It had taken twenty years for disaster relief legislation to move from the spartan formula of emergency repairs and temporary replacement of PL 81-875 to the multi-faceted program authorized by PL 91-79. In the first decade, the changes in the law were few and far between, such as PL 82-107 which provided for temporary housing, and PL 83-134 which broadened the interpretation of the law to allow the use of Government surplus for individual assistance. If the second decade from 1960 to 1970 was to be typical of the years that were to follow, then it is clear that the years of minimum activity and adherence to the original formula of PL 81-875 were over. In 1962, 1964, and 1965, Congress had sought to preserve PL 81-875 and yet provide disaster assistance in the case of the very big disasters by special legislation only for the States named. Although no one at the time appeared aware that the new types of assistance would become precedents for general legislation, it was in the nature of the system that ultimately they would be reenacted for general use. Nor did it take long, for almost immediately afterwards, starting in 1965, bills providing for the expansion of Federal assistance were introduced in each of the three successive Congress until, finally, Hurricane Camille provided the impetus that enabled Senator Bayh and his co-sponsors to persuade Congress that what it had provided was not enough. The first breach in the PL 81-875 system was begun by the passage of PL 89-769, which, though it contained some new types of assistance, hardly touched upon those sought by Senator Bayh's bill. Congress' last act of the decade, PL 91-79, had now authorized a panoply of assistance that included most of the provisions -- public and individual -- of the Bayh bills, and even some not included (such as loan forgiveness). PL 91-79 provided for up to 50 percent Federal funding for repair and restoration for all types of public facilities (excepting non-essential, as interpreted by OEP); many kinds of assistance for individuals, such as temporary housing, food coupons, unemployment assistance; and liberalized loans, plus limited loan forgiveness. In addition, PL 91-79 made a beginning in providing matching Federal funds to assist States in developing State preparedness plans.

However much PL 91-79 widened the scope of Federal assistance, almost all of the substantive assistance provisions were made temporary - to remain in effect only through calendar year 1970. The only substantive section made permanent was that for assisting forest fire suppression. So, unless the second session of the 91st Congress chose to reenact these provisions, the disaster

relief legislation was not much more than existed after the 1966 act, PL 89-769, viz., PL 81-875 and the several amendments to the act, few of which went beyond its original purpose.

As the new decade of the 1970's opened, part of Congress' agenda for that year was inescapably that of developing legislation that would otherwise lapse at the year's end. Some new legislation would be on the statute books surely, but in what form and what would it contain? Would Congress again amend PL 81-875, adding amendments to amendments, or would it write a new bill in omnibus form, to bring together into a single act all the various parts, including collateral loan legislation that had been developed independently by another committee? Senator Bayh at one point commented that the disaster relief legislation as it existed "...has been spread over the record in so many places that it would take a Perry Mason and all his assistants to discover it".¹ The other question concerned the contents of the prospective legislation. Would Congress choose to reenact the assistance provisions of PL 91-79 into permanent law, or would it regard them as exceptions made necessary for Hurricane Camille only?

II. Legislative Development of PL 91-606

Congress did not have to wait long before it had a bill to consider as a possible successor to PL 91-79. As before, the initiative of developing the new legislation was assumed by Senator Bayh of Indiana. During January and February, the Senate Disaster Relief Subcommittee, of which he was Chairman, conducted hearings in Mississippi and Virginia, inquiring on how disaster relief was conducted following the Camille hurricane.² A good deal of preliminary work must have been done in the half-year following enactment of PL 91-79, since on March 10, Senator Bayh introduced his bill, S. 3619, with 26 co-sponsors.³ It embraced a most ambitious and comprehensive concept of what the Federal role should be, even going beyond his earlier 1965 proposal, and certainly well beyond the scope of PL 91-79.

Entitled an "Omnibus Disaster Assistance Act," it proposed the following ideas: (1) It would replace all the previous legislation, repealing PL 81-875 as amended. (2) Under its Title II, it would establish a new Federal Office of Disaster Assistance to which would be transferred the disaster relief functions of the Office of Emergency Preparedness and the entire Office of Civil Defense. The new agency would be established within the Office of the President under its Director, whose authorities were described in the bill. This would take effect within 90 days after enactment or earlier,

as prescribed by the President. (3) In its Title IV, the bill would establish a "National Major Disaster Insurance Program" under the Secretary of Housing and Urban Development, with a capitalization not exceeding \$500 million. The insurance program would cover losses for all types of major disasters (not only floods) for specified limits, i.e., \$15,000 per dwelling and content of \$5,000 and up to \$30,000 aggregate liability for any single structure. The insurance companies would be invited to participate and insurance policies would be made available for purchase against losses. (4) The main body of S. 3619 consisted of Title III, Administration of Disaster Assistance, which was divided into Part A, Emergency Relief; Part B, Recovery Assistance; and lastly, Part C, General Provisions. The dichotomy is interesting since the bill reflected, even though ambiguously, the separation of "emergency relief" and the new category of "recovery assistance." Part A included only four sections with the titles Federal Coordinating Officer, Emergency Support Teams, Emergency Communications Systems, and Cooperation of Federal agencies; Part B, Recovery Assistance, included the real substance of the bill--all the sections of the bill which provided individual and public assistance. These followed from Section 305 through Section 326--22 in number. Part C, General Provisions, contained eight sections, all of which were directive/administrative in character, such as the State planning grants, duplication of benefits, etc. The contents of S. 3619 will be described in the next section of this chapter, analyzing the sources of PL 91-606. There are, however, a few reference points of the bill that are worth noting at this time, i.e., the SBA and FmHA loan provisions included a forgiveness of up to \$5,000, replacing the \$1,800 maximum in PL 91-76; the temporary housing provision provided for "purchase or lease"; permanent repair on non-Federal-aid system highways, allowing 50 percent of the cost; a Community Disaster Loan Fund of up to \$100 million would be established to make loans of up to 25 percent of the community's current annual budget.

A new element to formulating a new disaster relief act was added by President Nixon's administration on April 23, when the ranking minority member of the full Committee on Public Works, Senator John Sherman Cooper of Kentucky, introduced his bill, S. 3745.⁴ As a manifestation of the Administration's interest in the bill, on the previous day, April 22, President Nixon issued a special message to Congress on the subject of disaster relief.⁵ In this statement, the President observed that the disaster assistance program had "grown in a piecemeal and often haphazard manner, involving over 50 separate Congressional enactments and Executive actions," and that the "complex program"

had "a number of gaps and overlaps and needs increased coordination." The message was mainly a review of the administration's accomplishments and planning by OEP under its energetic Director, General George A. Lincoln.

The bill, S. 3745, carried the title of "Disaster Assistance Act of 1970." Although it sought to provide for the whole range of disaster assistance, it was written in the form of piecemeal amendments to PL 81-875--a melange of provisions that was hardly comprehensible to anyone not familiar with the existing legislation. S. 3745 as written was hardly a contribution toward systematizing the already dispersed legislation, and would have been a nightmare to explain and administer. In content, S. 3745's disaster relief provisions in most respects were as generous as those of the Bayh bill, including a loan forgiveness of up to \$2,500 and in a different phrasing, a 100 percent funding of public facility restoration (as compared with 50 percent).

It substituted for the PL 81-875 formula "temporary repair and emergency replacement" that of "making repairs to and replacements of public facilities," adding that "the Federal contributions therefore shall not exceed the net cost of restoring such facilities to their disaster capacity in conformity with current codes and specifications." This is, of course, equivalent to providing for a 100-percent Federal contribution for permanent restoration by the elimination of the words "temporary" and "emergency" with reference to repairs and replacements. Included also in Section 4 was a provision for the use of the Economic Development Act of 1965 by the Secretary of Commerce to inject additional Federal funds into major disaster areas. Another was the proviso for debris clearance under which the State or local government must arrange "unconditional authorization" from the owner, and must agree to "indemnify the Federal Government against any claims arising from such debris removal." Others were: the proposal for \$25,000 matching grants for improving and maintaining State disaster plans and authorization to provide assistance "in circumstances which clearly indicate the imminent occurrence of a major disaster." The provisions of S. 3745 were summarized by Senator Dole of Kansas, a minority member of the Subcommittee.⁶

1. Provision for removal of the "emergency repair or temporary replacement" criteria of work on essential public facilities, with the proviso that the Federal cost of permanent repair or replacement not exceed the net worth of the facility to its predisaster capacity.

2. Provisions to allow the President to contract or make agreements with private relief organizations in order that the activities of these organizations can be coordinated by appropriate officials and conditioning of such agreements on compliance with Title VI of the Civil Rights Act of 1964.
3. Provisions to provide for forgiveness of up to \$2,500 on losses or damage in excess of \$500 on the principal of an SBA or FmHA disaster loan.
4. Provision that the State planning program would be an on-going activity rather than expire on December 31, 1970. Additionally, provisions to limit the amount of assistance available to any one State to \$25,000 per annum and in amounts which shall comprise more than 50 percent of the total cost of such planning.
5. Provision that debris-clearance assistance to the States and local government not be made unless the State or local jurisdiction agrees to unconditionally indemnify the Federal Government from any claims arising as a consequence of the debris removal.
6. Provision to establish a community disaster loan fund in the Treasury for assistance to local communities suffering substantial loss because of a major disaster.
7. Provision to authorize assistance in advance of an imminent disaster.
8. Provisions dealing with antidiscrimination in the administration of assistance; with the establishment of advisory groups on disaster relief; and on the assignment of advisory personnel to local communities.

The two Senate bills, S. 3619 and S. 3743, were duly considered by the full Committee on Public Works, consolidated, and reported out in the Committee Report on August 31 with its unanimous recommendation for passage as S. 3619.⁷ That bill was passed by the Senate on September 9 and referred to the House for consideration by its Committee on Public Works. The bill, as revised, was to a large degree a copy of Senator Bayh's original S. 3619 without the two controversial titles, Title II which would have established a new agency which combined OEP and the Office of Civil Defense, and Title IV which would have established the National Major Disaster Insurance Program. Its format and arrangement of the operative sections were likewise similar, except that its main title, Title III, Administration of Disaster Assistance, now had a new part, Part D, Restoration of Public Facilities, pertaining to restoration of

Federal as well as State and local public facilities. The revised S. 3619 was reconciled with the Administration's S. 3745 on a number of subjects (i.e., the \$25,000 improvement grants for State disaster planning, the "unconditional authorization" necessary for debris removal, the reduction of forgiveness to \$2,500, and community loans instead of grants), but not on S. 3745's proposal of 100 percent permanent restoration costs. The Senate report listed 15 new provisions in the revised bill and 22 provisions that either extended or amended the existing law.

The role played by the House of Representatives in developing PL 91-606 was not essentially different than in the earlier disaster relief acts. A number of bills introduced by individual House members are referred to in the Congressional Record, but apparently none was favorably reported out of committee. Whereas the House had previously preferred to consider special acts, this time it took no initiative in developing a bill and waited for the Senate to submit S. 3619 for its consideration. It would then consider item by item what the law should include. Following the Senate's passage of S. 3619, the bill was referred to the House Committee on Public Works. The House then amended S. 3619 by striking out all after the enacting clause and substituted its own text, as included in its report of September 29.²

The House version of S. 3619 was probably not intended to be a complete Act, and consisted only of those particular items on which its committee members chose to negotiate with the Senate. Its bill is remarkably brief, consisting of only a few pages with but 11 operative sections, amending PL 81-875 rather than replacing it. In both form and content, the House bill bears a close resemblance to the Administration's S. 3745, in contrast to Senator Bayh's broader approach. The House bill attempts to address all the new ideas presented by the experience of Camille. It limited itself to amending PL 81-875 and restoring those parts of PL 91-79 that were about to lapse. The single most important change in the House bill was its revision of Section 3(d) of PL 81-875, that, using the same language as the Senate's S. 3745, provided 100-percent Federal contributions for permanent repair and replacement of State and local government public facilities. Section 2(5) of the House bill stated that "...except that the Federal contributions therefore shall not exceed the net cost of restoring each such facility on the basis of design of such facility as it existed immediately prior to the disaster in conformity with current codes, specifications and standards." The other principal changes in the House bill were: that instead of the first 90 days of temporary housing without charge, this was changed to up to one year; instead of community grants to replace lost tax revenues, grants would be limited to providing

revenue for the two years after the disaster; OEP was directed to make a full study on how to prevent and minimize losses from major disasters, to be reported to Congress within a year after the law's enactment.

The House bill, S. 3619, passed on October 5, with a brief explanation of its contents and a minimum of debate, and with none of its provisions challenged. A reconciliation of the House and Senate bills was now in order, to be resolved in a conference committee.

Since the principal provisions of PL 91-79 would expire after December 31, time was of the essence. The Conference Report of December 15 recorded how the conflicting viewpoints were agreed upon in the final Act.⁹ As described in the report, the Senate bill established "an entirely new basic Federal disaster relief law" and repealed "all of the major substantive provisions...on the statute books"; the House amendment "by a series of cut-and-bite amendments retained all of the existing provisions of law but expanded them." The conference committee adopted the Senate approach by providing a new basic law, reaching an accord on the specific sections. The House passed the conference bill on December 17 and the Senate passed the bill on the following day. It was signed by the President on December 31, 1970.

III. PL 91-606, Disaster Relief Act of 1970

The remainder of this chapter will describe and explain the contents of Public Law 91-606 as closely as possible in terms of Congress' legislative intent. Since PL 91-606 has since been replaced, a detailed derivative analysis of each section will be deferred for Chapter VII, on Public Law 93-288, the Disaster Relief Act of 1974. Although 91-606 has been supplanted by later legislation, no one can doubt that it was the singular turning point in Federal disaster relief legislation viewed from the long term. Even though PL 91-606 was replaced by PL 93-288 four years later with some innovations, it formed the basic substance of the legislation and most of the sections were unchanged.

PL 91-606 is made up of three separate titles. Title I contains two sections: Section 101, Findings and Declarations; and Section 102, Definitions. Title II, the Administration of Disaster Assistance, includes the great bulk of the act, and is made up of 33 operative sections, more than were contained in all of the previous disaster relief acts combined. When Title II is broken down into the classification of categories used in analyzing the previous chapters, 16 of the sections are directive/administrative, 13 pertain to individual assistance, and only four are for public assistance. Title III, Miscellaneous, has four sections, all of which are directive/administrative in character. Each of the titled parts will be described in turn, using the classification referred to above.

A. Directive/Administrative Implementation

Section

- 201 Federal Coordinating Officer
- 202 Emergency Support Teams
- 203 Cooperation of Federal Agencies in Rendering
Emergency Assistance
- 204 Use of Local Firms and Individuals
- 205 Federal Grant-in-Aid Programs
- 206 State Disaster Plans
- 207 Use and Coordination of Relief Organizations
- 208 Duplication of Benefits
- 209 Nondiscrimination in Disaster Assistance
- 210 Disaster Warnings
- 221 Predisaster Assistance
- 222 Emergency Communications
- 223 Emergency Public Transportation
- 234 Disaster Loan Interest Rates
- 243 Minimum Standards for Residential Structure Restoration
- 251 Federal Facilities
- 253 Priority to Certain Applications for Public Facility
and Public Housing Assistance

B. Individual Assistance

- 226 Temporary Housing Assistance
- 231 Small Business Disaster Loans
- 232 Farmers Home Administration Disaster Loans
- 233 Loans Held by the Veterans Administration
- 235 Age of Applicant for Loans
- 236 Federal Loan Adjustments
- 237 Aid of Major Sources of Employment
- 238 Food Coupons and Distribution
- 239 Legal Services
- 240 Unemployment Assistance
- 242 Timber Sales Contracts
- 254 Relocation Assistance

C. Public Assistance

- 224 Debris Removal
- 225 Fire Suppression Grants
- 241 Community Disaster Grants
- 252 State and Local Government Facilities

A. DIRECTIVE/ADMINISTRATIVE IMPLEMENTATION

Title I: Findings and Declarations; Definitions

SECTION 101, FINDINGS AND DECLARATIONS

Since PL 91-606 was written to replace PL 81-875 and the amendatory acts that followed it, the Act had to be written as though no act existed. The first section of the Act therefore stated Congress' purpose as providing "an orderly and continuing means of assistance...to States and local governments in carrying out their responsibilities to alleviate the suffering which resulted from such disasters" as are named in this section. The above language is the same as in the original Act of 1950. The language of the preamble section is considerably broader in that it speaks to how disasters "adversely affect individual persons and families with great severity" and make necessary "special measures" for "the reconstruction and rehabilitation of devastated areas." Three major purposes of the Act are listed:

- (1) revising and broadening the scope of existing major disaster relief programs;
- (2) encouraging the development of comprehensive disaster relief plans, programs and organizations by the States; and
- (3) achieving greater coordination and responsiveness of Federal major disaster relief programs.

SECTION 102, DEFINITIONS

Except for adding four additional kinds of disasters, the section on definitions was largely unchanged from the corresponding section of PL 81-875. The procedure for requesting a major disaster and the criteria guiding the President's determination, i.e., "sufficient severity and magnitude" remained the same. However, it should be noted that the list of disaster occurrences was broadened to include several new ones, namely, "tornado, highwater, wind-drive water and tidal wave," as were included in the Senate bill. Several other changes were made: The District of Columbia, no longer referred to as the Board of Commissioners, was now listed with the fifty States and Territories. For the first time, the "Director" of OEP was referred to in the definitions section of the Act.

Title II, The Administration of Disaster Assistance

SECTION 201, FEDERAL COORDINATING OFFICER

The designation of a Federal Coordinating Officer in PL 91-606 was a carryover from Section 9 of PL 91-79. The 1969 Act specified that immediately after his designation of a major disaster area, the President would appoint a Federal Coordinating Officer to operate under the Office of Emergency Preparedness. His duties were to be responsible for coordination of all Federal disaster assistance, to establish field offices and to assist local citizens and public officials in promptly obtaining assistance to which they are entitled.

The language in Section 201 was largely a restatement of the 1969 Act but with some differences. "In order to effect the purpose of this Act...the coordinating officer...shall":

- (1) make an initial appraisal of the types of relief needed;
- (2) establish such field offices as he deems necessary and as authorized by the Director;
- (3) coordinate the relief administered by the voluntary relief organizations which agree to act under his coordination and direction. Also, that the responsibilities of the Red Cross under its 1908 charter shall be respected; and
- (4) take such other action consistent with the authority delegated to him by the Director, and assist in obtaining assistance for local citizens and public officials to which they are entitled.

It should be noted however that Section 201 does not use the language of Section 9, PL 91-79, "Such officer shall be responsible for the coordination of all Federal disaster relief and assistance...". One may therefore ask whether Congress had changed its mind and intended to limit the FCO's authority with respect to the Federal agencies. There is nothing in the conference report that refers to this specific question. The subject is alluded to in the Senate committee's report of August 30 that reported favorably on S. 3619. That bill also had a Section 201, Federal Coordinating Officer, from which the PL 91-606 section, by the same name was copied. It also had a Section 203, Cooperation of Federal Agencies in Rendering Emergency Assistance, that was largely copied. In its report, the committee stated, in commenting on Section 203:¹⁰

Under it all, the Federal agencies are authorized, upon direction of the President to provide assistance in a number of ways... All Federal agencies are enabled to utilize or lend to State and local governments their facilities, personnel, supplies and equipment, with or without compensation.

It is the intent of the committee that actions of the Federal agencies, under this section, shall be coordinated by the Director.

While the views expressed here do not refer specifically to the authorities of the Federal Coordinating Officer, one may infer that Congress did intend in Section 201 of PL 91-606 that the FCO, through authority delegated by the Director, would continue to "be responsible for the coordination of all Federal disaster relief and assistance" as described in PL 91-79.

SECTION 202, EMERGENCY SUPPORT TEAMS

The idea of detailing Federal agency personnel to emergency support teams deployed, on a temporary basis, to a major disaster area was a concept that probably grew out of the Hurricane Camille experience.¹¹ Interestingly enough, the same section was in Senator Bayh's original bill under Part A, Emergency Relief, as distinct from Recovery Assistance in Part B. The original S. 3619 also had two similar sections: Sections 331 and 332, which authorized the Director to establish emergency supply depots and to assign advisory personnel to assist the chief executive officer of a State or local government in a major disaster area upon his request. These last two sections were deleted when S. 3619 was reported to the Senate. It is not clear why Congress felt that it was necessary to include authorization to furnish emergency support teams in the statute. Nor does the record define what "emergency support teams" are, since the detailing of Federal agency personnel to assist in the disaster area was hardly new; nor did emergency support teams require any more statutory authority to institute than did many of OEP's other organizational practices, such as disaster field offices or disaster assistance centers.

SECTION 203, COOPERATION OF FEDERAL AGENCIES IN RENDERING EMERGENCY ASSISTANCE

This section is the longest and most comprehensive of any single section in the Act. It is, in effect, a restatement of almost all the provisions of the original PL 81-875, framed in the context of the new expanded statute. It recognized "emergency assistance" (as provided by PL 81-875) as a different category of assistance than those parts of the law that provided for economic recovery and restoration of public facilities. But Congress at this state in the development of its disaster relief legislation had not yet perceived "emergency assistance" as a clearly separate category of assistance that would be declared, as in PL 93-288 of 1974, independently or

instead of a major disaster. Under Section 203, emergency assistance was but a part of major disaster assistance--that part to be immediately performed during or soon after a disaster's impact.

A comparison with PL 81-875 will show that Section 203 included all its basic sections, Sections 3, 4, 5, 6, and 7, which included the functions of utilizing and lending (with or without compensation) the Federal agencies' equipment, supplies, facilities and personnel; making repairs to State and local public facilities; providing emergency shelter for individuals and families; included also were authorization for the President to direct Federal agencies and to coordinate their activities, to delegate his authority and to make rules and regulations, and to conduct periodic reviews to evaluate programs. The section provided too for distributing to the relief organizations "medicine, food, and other consumable supplies or emergency assistance," but as noted in Section 201, the statute extended recognition to the Salvation Army and the Mennonite Disaster Service, in addition to the American National Red Cross.

One of the most important provisions included in the new Act is found in subsections (4)(B) and (d) which set forth the limits of the Federal Government's emergency repair of public facilities and the costs therefor. Here, the Act adopted the provisions in the House bill which stated that the costs for repairing, restoring or replacing public facilities "shall not exceed the net cost of restoring each such facility on the basis of design of such facility as it existed immediately prior to the disaster in conformity with current codes, specifications, and standards." It further stated in subparagraph (b) that "Emergency work performed under subsection (a)(4) of this section shall not preclude Federal assistance under any other section of this Act." In other words, the fact that the law now provided for permanent repair and restoration of public facilities does not negate entitlement for emergency repair and returning the essential facility to immediate public service.

Section 203(4)(h) also included a new provision from the House bill, directing OEP to make a full and complete investigation of what can be done to prevent or reduce losses of property and personal injury and deaths from fires, earthquakes, tornadoes, frosts and freezes, floods, etc. The OEP report of its findings was to be submitted to Congress a year after the law's enactment.¹²

SECTION 204, USE OF LOCAL FIRMS AND INDIVIDUALS

This section had originated in Senator Bayh's first S. 3619 (Section 321) and was retained in the Senate's revised bill. It stated simply that preference shall be given to local firms and individuals and organizations "who reside and do business primarily in the disaster area" in the expenditure of Federal funds, whether for debris clearance, purchase of supplies, or other Government contracts. The Camille disaster had brought to a focus the economic desirability of shoring up the local economy by extending preference to local rather than to transient or out-of-town firms.

SECTION 205, FEDERAL GRANT-IN-AID PROGRAMS

This section provided that any Federal agency administering a grant-in-aid program was authorized, if requested by a State or local government, to modify or waive for the duration of a major disaster such "administrative procedural conditions" which would otherwise prevent the giving of assistance in such programs, if the disaster caused such inability to meet those conditions. The conference report cautioned that the section was limited to "a waiver of administrative procedural conditions rather than all conditions for assistance."

SECTION 206, STATE DISASTER PLANS

Despite the lack of State participation in the State Disaster Plans program under Section 3 of PL 91-79, Congress continued it under its new law. But this time the scope and purpose of the plans were broadened. The new Act provided for the development of comprehensive plans and practicable programs for preparation against major disasters, and for relief and assistance for businesses and local governments as well as for individuals following major disasters. The Act further provided that such plans should also include the long-range recovery and reconstruction of damaged public and private facilities.

The Senate bill, like PL 91-79, included a cutoff date--December 31, 1971--which was removed in the final Act. A new addition was added by subsection (e) in which the President was authorized to make grants of 50 percent of the cost for improving, maintaining and updating State disaster plans with a grant limitation of \$25,000 a year to any State. In all other respects, Section 206 was identical to the provisions of PL 91-79. The grant was limited to \$250,000 on a 50 percent matching basis, and was provisional upon the State's designating an agency specifically qualified to plan and administer a disaster relief program and its appointing a State Coordinating Officer to act as its counterpart to the Federal Coordinating Officer.

SECTION 207, USE AND COORDINATION OF RELIEF ORGANIZATIONS

In this section, Congress took cognizance of what it had learned in the Hurricane Camille experience. The voluntary disaster relief organizations, and especially the American Red Cross, had contributed significantly in providing relief to the disaster victims.¹⁴ But each organization was acting largely unilaterally, without coordination. Section 207 sought to correct this by providing that the Director would utilize, with their consent, the services of the American National Red Cross, the Salvation Army, and the Mennonite Disaster Service and others in the distribution of medicine, food, and other supplies. Subsection (b) provided also that the Director could enter into agreements with these organizations in which they would act under the coordination of the Federal Coordinating Officer. This section is largely an amplification of what was included in Sections 201 and 203.

SECTION 208, DUPLICATION OF BENEFITS

The earlier Act of 1966, PL 89-769, had provided in statutory form a statement of principle prohibiting duplication of benefits of major disaster assistance, that "no person, concern or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other such program." Since PL 91-606 repealed all previous disaster legislation, Section 208 now provided the substitute provision. The same language was employed, but it now assigned the responsibility to the Director of OEP for carrying it out, and for assuring that compensation received from insurance or any other source would not be duplicated under Federal assistance. He was further to direct that such amounts received which exceeded losses be reimbursed to the Federal Government.

SECTION 209, NONDISCRIMINATION IN DISASTER ASSISTANCE

Although the Federal Civil Rights Act of 1964 had provided against racial discrimination, Congress sought further protection of all minorities by including this provision in its new Act. During the Camille hearings, the charge of discriminatory treatment was frequently made, levelled at the State and local governments and at the American Red Cross.¹⁵ Section 209 directed OEP's Director to issue regulations and amend such regulations as exist for the guidance of relief personnel that all disaster assistance activities shall be "accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status prior to a major disaster." Subsection (b) further reinforced

the provision by requiring that "relief organizations shall be required to comply with "regulations" issued by the Director.

SECTION 210, DISASTER WARNINGS

This section is an exact copy of Section 5, PL 89-769 of 1966 which authorized the President to utilize and make available to Federal, State and local agencies the defense communications system for the purpose of warning the civilian population of imminent disasters.

SECTION 221, PREDISASTER ASSISTANCE

In this section, Congress explicitly empowered the President to provide disaster assistance before a disaster actually occurred. Under Section 221, the President was authorized to use Federal agencies and "all other resources of the Federal Government to avert or lessen the effects of such disaster before its actual occurrence." The language of the section was taken from the House bill. A corresponding section of the Senate bill authorized the President, without declaring a disaster, to utilize Federal resources to assist State or local governments to avert or lessen the effects of a major disaster in circumstances which clearly indicate the imminent occurrence of a major disaster. The language of the House bill gave the President greater discretion, especially since the conference report stated, "It is not necessary for the President to declare a major disaster before assistance can be provided under this section."

It may be added here that a number of situations had occurred shortly before PL 91-606 was enacted in which such predisaster assistance was rendered by Federal agencies - in both instances by the Corps of Engineers under its own statutory authority but with the coordination of OEP. In the Spring of 1969, the Corps acting with OEP's coordination had undertaken flood protection measures in the northern Mississippi and the Missouri River basins in anticipation of severe flooding. "Operation Foresight," as it was called, at a cost of \$20 million prevented damage estimated at over \$200 million. Another such situation involved a sunken chlorine barge in the lower Mississippi River which for a time imposed a dangerous threat to the nearby population, but which was raised without incident. Such situations would be sure to recur in different forms and Section 221 provided assurance of adequate authority by the President to providing whatever assistance would be needed "to avert or lessen" disaster's effects.

It may be observed that the original disaster relief act, PL 81-875, in Section 2 stated that the President could declare any of the types of listed disasters "or other catastrophes" a major disaster which in his determination "threatens to be of such severity and magnitude to warrant disaster assistance." Section 221 affirmed that Presidential authority, making it more explicit. The only other instance in which predisaster authority existed previously in the law was Section 13 of PL 91-79 which provided fire suppression assistance for forest and grassland fires "which threaten such destruction as to constitute a major disaster."

SECTION 222, EMERGENCY COMMUNICATIONS

The Hurricane Camille experience had brought to Congress' attention that it was sometimes necessary for the Federal Government to augment certain communications facilities and services in providing disaster assistance. Section 222 authorized the Director, during or in anticipation of an emergency, to establish temporary communications in any major disaster area to carry out OEP's functions and to make such communications available to State and local officials.

SECTION 223, EMERGENCY PUBLIC TRANSPORTATION

This section authorized the Director to provide temporary public transportation service to meet the emergency needs in a major disaster area, "as may be necessary to enable the community to resume its normal pattern of life as soon as possible." The section described "such service" as will provide "transportation to governmental offices, supply centers, stores, post offices, schools, and major employment centers." The conference report added, "restricted, however, to authority to provide temporary public transportation service."

SECTION 234, DISASTER LOAN INTEREST RATES

The interest rates on disaster loans in this section refer to the loans to be made in the following sections: Section 231, Small Business Disaster Loans; Section 232, Farmers Home Administration Emergency Loans; Section 236(b), Federal Loan Adjustments applying only to the Department of Housing and Urban Development; and Section 237, Aid to Major Sources of Employment. The revised Senate bill, S. 3619, had provided that the disaster loan interest rate (including that for Community Disaster Loans under its bill) would be determined by the going Treasury Department rate on its marketable obligations of 10 to 12-year maturity reduced by not to exceed 2 percent per annum. But since the determination of interest rates came under the jurisdiction not

of the Committee on Public Works but of the Committee on Banking and Currency, the rate determination recommendation was made by the latter committee which acceded to the rate in the Senate bill.¹⁶ The House bill would have reduced the going Treasury rate by 1 percent. The conference recommended the 2 percent reduction, and since the market rate at the time was 7 3/8 percent, the rate at the time of enactment of PL 91-606 was 5 3/8 percent. Section 234 stipulated that, "In no event shall any loan made under this section bear interest at a rate in excess of six percent per annum."

SECTION 243, MINIMUM STANDARDS FOR RESIDENTIAL STRUCTURE RESTORATION

The purpose of this section in the Senate bill was to assure that no loan or grant would be made using Federal funds under the control of the Director for home repair, restoration or replacement that did not meet minimum standards of safety, decency, and sanitation. The bill provided that these standards would be established by the Secretary of Housing and Urban Development, prescribing the regulations in accordance with current codes and specifications, and that he would consult with Federal, State, and local officials to carry out the purpose of the section with necessary flexibility to meet applicable building codes and regulations. The House bill had no comparable section.

The Senate bill, S. 3918, read, "No loan or grant made by any Federal agency or by any relief organization operating under the supervision of the Director..." Unfortunately and probably due to an error in the final drafting, Section 243 of PL 91-606 reads, "No loan or grant made by any relief organization operating under the supervision of the Director..." Obviously, this makes no sense since relief organizations are the possible exception of the American Red Cross are not responsible for the business of residential structure restoration. The intent of Congress was nevertheless made known by this section as a statement of principle for housing repair or replacement, however impaired by the wording of PL 91-606.

SECTION 251, FEDERAL FACILITIES

This section is a replacement of the corresponding section in PL 81-875, Section 6, which enabled a Federal agency, upon the President's determination and authorization, to repair or replace its facilities damaged or destroyed in a major disaster, and provided procedures for the funding thereof.

SECTION 253, PRIORITY TO CERTAIN APPLICATIONS FOR PUBLIC FACILITY AND PUBLIC HOUSING ASSISTANCE

This section is a restatement of the same section in PL 89-769, Section 8, using similar language. It refers to the previous Federal Housing Acts of 1937, 1954, 1955, and 1965, and to an Act of the Consolidated Farmers Home Administration Act to provide priority consideration for a period of not more than six months to housing applications from public bodies in major disasters.

NOTE: There are four more sections in PL 91-606 that are of the directive/implementive classification, all part of the last title, Title III: Section 301, Technical Amendments; Section 302, Repeal of Existing Law; Section 303, Prior Allocation of Funds; and Section 304, Effective Date. These will be dealt with more appropriately at the end of this chapter.

B. INDIVIDUAL ASSISTANCE

SECTION 226, TEMPORARY HOUSING ASSISTANCE

Temporary housing assistance on an interim basis had been provided by Section 10 of PL 89-769. It had authorized the President to provide housing accommodations from several sources: housing owned by the Federal Government; unoccupied units owned by local public housing agencies; and leasing existing dwellings and mobile homes. The criteria of eligibility were that the owner's or tenant's dwelling was certified to have been damaged or destroyed as to become uninhabitable as the result of a major disaster. In cases of financial hardship, rentals were to be "compromised, adjusted, or waived" for a period of one year, but in no case was the monthly housing cost to be over 25 percent of the individual's or the family's monthly income.

The changes in the law's provisions on temporary housing reflected some of the experience and lessons gained from the Camille disaster. The pages of the Senate's Hearings bear ample evidence that however good the law's intentions, in practice its limiting the Government's authority to leasing homes made the law largely unworkable. Leasing mobile homes for an industry not organized to offer leased homes was costly, and often these were in limited supply and not of standard quality. Section 226 supplied the remedy by broadening the procurement authority, giving a broad blanket authority to the Director "to provide temporary housing, or other emergency shelter, including but not limited to mobile homes or other readily fabricated dwellings..." Another important change was that for the first twelve months of occupancy, no rentals were to be charged. PL 91-79 had stipulated that "in cases of financial hardship," rentals could be "waived" for

a period of a year. During the Camille Senate hearings considerable dissatisfaction was expressed with this provision. What exactly was "financial hardship"? The HUD managers to whom OEP had delegated the housing function thought that 90 days of free rent was an adequate concession to the terms of the statute whereas Senator Bayh, for example, felt that such cases warranted a year of free rent.¹⁷ The matter was more easily resolved by giving every one up to a year of rent without charge.

The Camille disaster had presented also the problem of what to do for families whose homes had been destroyed and who would have no dwelling to which to return even after the year's free rent had elapsed. For these, Section 226 provided, "Notwithstanding any other provision of law, any such emergency housing acquired by purchase may be sold directly to individuals and families who are occupants thereof at prices that are fair and equitable."

The use of mobile homes in new locations created problems not dealt with before, especially when the number of mobile homes used ran into the thousands. It was found most convenient to place them into neatly arranged clusters or group sites for economy of both land use and utilities--electricity, water and sewerage services. But who would pay for these? The new law provided, "Any mobile home or readily fabricated dwelling shall be placed on a site complete with utilities provided by State or local government, or by the owner or occupant of the site who was displaced by the major disaster, without charge to the United States." However, the law deemed it wise to provide a safety valve in situations where getting people speedily into housing was imperative and the State or local government could not resolve the cost of sites and utilities. The statute provided that "...the Director may elect to provide other more suitable and accessible sites at Federal expense when he determines such action to be in the public interest."

An entirely new provision for temporary housing assistance was added by Subsection (b) for cases of financial hardship. This consisted of the Government's making mortgage or rental payments on behalf of individuals and families who had received a written notice of dispossession or eviction from a residence by reason of foreclosure of mortgage or lien, cancellation of a sales contract, or termination of a lease made prior to the disaster. This form of assistance would be provided for up to a year or for the duration of the financial hardship, whichever was the lesser. In addition, the Director would provide reemployment assistance to individuals who were unemployed as a result of the disaster under Section 240 of the Act.

SECTION 231, SMALL BUSINESS DISASTER LOANS

SECTION 232, FARMERS HOME ADMINISTRATION EMERGENCY LOANS

Since the substantive provisions for both these sections were the same, they may be analyzed together. It may be noted that the SBA loans are referred to as "disaster loans" and the FmHA's described as "emergency loans." The names are those designated by the respective agencies, the nature of the loans and their purpose being essentially the same.

Under Sections 6 and 7 of PL 91-79, SBA and FmHA disaster loans were made available, in which at the borrower's option, on losses over \$500, the Government could forgive or cancel a portion of the principal or interest of the loan. Up to \$1,800 of the principal or an equivalent amount of the interest during the first three years could be forgiven. The law, however, established two categories of borrowers: those to whom the forgiveness provision could be applied, and those who, in Senator Bayh's words, "have some capability of assisting in their own recovery because of the availability of private credit," and who were ineligible for the forgiveness. The latter group could borrow from the SBA and the FmHA without regard to whether assistance was otherwise available and could secure loans at the Treasury rate.

It was predictable that, as the Camille experience was to provide, the double standard of making loans was less than practicable. Sections 231 and 232 established a single standard applicable to all who came within its provisions. They provided that on that part of any loan over \$500, the Government would allow a forgiveness of not over \$2,500 to apply to loans made to cover losses and damage resulting from a major disaster, which amount could be applied to the principal or to deferring interest payments during the first three years of the term of the loan. The rate of interest would be standardized at the Treasury rate determined in Section 234 of the Act. The loan was to be used for, and the extent of the loan was limited to, the cost of repair or replacement of property damaged or destroyed, or to refinance any mortgage or lien against such damaged or destroyed property, less compensation received by insurance. The loans were to be granted "without regard to whether the required financial assistance is otherwise available from private sources." In both sections, the acts establishing the loan programs of SBA and FmHA were amended to provide for the provisions described here.

SECTION 233, LOANS HELD BY THE VETERANS ADMINISTRATION

This was an entirely new section, as no previous disaster legislation existed that was addressed to assisting veterans as a separate category. It was designed to alleviate the financial problems of over 300,000 veterans who had secured loans both through banks and directly from the Veterans' Administration.¹⁸ The section amended Section 1820(a) (2) and (f) of Title 38, U. S. Code, on which the Senate Report on S. 3610 commented: "...will make it unequivocally clear that the Administrator's broad authority to agree to a modification of a guaranteed or insured home loan applies fully to loans owned by the Administrator." The Administrator was authorized in the first section to agree to the modification of the terms of any loan on any residential property securing such a loan, which was damaged or destroyed by a major disaster, such as rate of interest, or time of payment of principal or interest. In the second section, he/she was directed to extend such forbearance or indulgence in individual cases as warranted by the facts of the case, and to provide counseling and other assistance to the owners of such property concerning assistance available from other Federal agencies.

SECTION 235, AGE OF APPLICANT FOR LOANS

This is a declaration of policy that in the administration of the Federal disaster loan program, under Sections 231, 232 and 233, the age of the adult loan applicant shall not be considered in determining whether such a loan should be made, or the amount of the loan.

SECTION 236, FEDERAL LOAN ADJUSTMENTS

This section is a restatement of a provision in an earlier law, Section 3 of PL 89-759, with a single change, viz., in the interest rate which was now governed by Section 234. The first paragraph provided that the Secretary of Agriculture was authorized to extend maturity dates of REA loans to a period not beyond 40 years and to adjust payment schedules if the borrowers were unable to make payments because of disaster damage. The second paragraph authorized the Secretary of HUD to refinance any note or obligation which could not be paid because of disaster damage, and to allow a suspension of payments not to exceed five years in cases of severe financial hardship.

SECTION 225, FIRE SUPPRESSION GRANTS

In the same terse four lines of Section 13 of PL 91-79, the new Act under its new title authorized the President in this section to provide assistance, including grants, to any State for the suppression of any fire on publicly or privately-owned forest or grassland which threatens such destruction as would constitute a major disaster.

SECTION 241, COMMUNITY DISASTER GRANTS

There can be little doubt from a reading of the Senate hearings and the discussion of S. 3619 in both chambers of Congress that direct financial assistance to beleaguered communities affected by Camille was regarded as indispensable. A number of communities appeared devastated. How would they be able to maintain their credit--to meet payments on their bonded indebtedness--and how would they have enough tax revenue to conduct their everyday essential services? A large part of the tax base in some of the communities had been washed or blown away. Senator Bayh voiced the lawmakers' common concern when he judged that "perhaps the most important... is section 241 authorizing grants to local governments which as a result of a major disaster have suffered a substantial loss of property tax revenue."²² The Senate in passing its S. 3619 gauged the magnitude of the problem by voting an authorization of a Community Disaster Loan Fund of \$100 million. The only voice expressed to the contrary was that of Senator Spong of Virginia, one of the Camille-struck States, who accepted its necessity but felt that since the local governments were the creation of the State government, that the States should also participate in helping.²³

Both Houses were in agreement on the need. But in what form? The Senate preferred loans, while the House chose to give grants. And what should be the guiding criteria? It was agreed that before any loan or grant should be given the community must have suffered "a substantial loss of property tax revenue (both real and personal)." The Senate bill affixed substantial loss at 25 percent or more of its predisaster tax base. The House bill left the substantial loss determination be to made administratively. The Senate bill would have made loans for two years without interest, and for such periods as necessary but not over 20 years, and these at the rate set in Section 234. Since the House bill would have made grants instead of loans, it prescribed some safeguards against abuse. The grant would be made only for the year in which the disaster occurred and two years thereafter. The amount of the grant would be limited to the difference between the average tax

revenue during the three years prior to the disaster and the revenue of the two years succeeding it. The tax rates and the rate of assessment evaluation were not to be reduced during the period of receiving the grants. If they were reduced, however, the amount of the grant would be determined by the prior tax rates.

Section 241 incorporated the provisions of the House bill: grants rather than loans, based upon a "substantial loss of property tax revenue (both real and personal)" that was to be administratively determined. The grants were to be made for the tax year in which the disaster occurred and for each of the following two years, with limits on the amounts and with the safeguards described above as included in the House bill.

At the time when PL 91-606 was being drafted, there was congressional concern that unless the tax base of a community impacted by disaster was protected, such communities might be headed for bankruptcy. Section 241 was considered one of the bill's most important provisions. It is not clear whether the section anticipated problems that failed to develop, whether the other expanded benefits in PL 91-606 made Section 241 superfluous, or indeed whether OEP's criteria for eligibility were too strict. For whatever the reason, Section 241 was rarely used. Although a number of communities applied for it, only a few could meet the OEP criteria of a substantial loss placed at 25 percent of the property tax revenue. The designers of PL 91-606 in expanding Federal disaster assistance had built into the law so many other benefits and provisions that Section 241 proved hardly necessary. Almost overnight, the Camille cities began rebuilding with the vast sums of Federal money that poured into the devastated areas for rebuilding and restoring the lost tax base. The combined strengths of all of PL 91-606 provisions resulted in Section 241 being one of the least used sections of the Act.

SECTION 252, STATE AND LOCAL GOVERNMENT FACILITIES

Section 252 represents the almost completed culmination of the evolution of Federal legislation on this subject. What began with temporary repair and emergency replacement of essential local public facilities under PL 81-875 had progressed by degrees to the Federal Government's bearing 100 percent of the costs of repairing or replacing all State and local public facilities with the exception of those "used exclusively for recreation purposes."

It may be advisable at this point to review the legislation relating to repair of public facilities prior to PL 91-606. The first Act of 1950 provided for the repair of local public

facilities, limiting Federal contributions to temporary repair and emergency replacement. The scope of the Act was enlarged to include State facilities by PL 87-502 of 1962 as an amendment to PL 81-875. The first major revision of the original 1950 formula came in 1966 when PL 89-769 provided for 50 percent Federal reimbursement for the repair of a long list of named public facilities. In 1969, PL 91-79, limiting the Act through the calendar year 1970, provided for Federal payment of 50 percent for the repair of non-Federal-aid roads, with States having to agree to pay the other 50 percent. In addition, the 1969 Act provided for 50 percent payment for the repair of public facilities damaged or destroyed in the process of construction. There, matters stood when Congress met in 1970 to write a replacement for its expiring law.

There were three major considerations to resolve as the conference committee met to settle its differences. Given the climate of opinion after Camille, there was little question but that the subject of public facility repair would be treated at least as generously as in the existing legislation, i.e., that the Federal Government would pay 50 percent of the repair costs on non-Federal-aid highways, 50 percent of the repair of the named public facilities, and 50 percent of public facilities damaged when in the process of construction. The major unresolved considerations were: Should the Federal contribution remain 50 percent or should it be more? Should it include all public facilities or should some be excluded? Finally, in what language should the law be stated as to protect the legitimate interests of State and local governments and yet protect the Federal Government against abuse?

S. 3619, as passed by the Senate, is almost identical to Section 252 except in several important particulars. It provided for the Federal contribution "not to exceed 50 percent of the net cost of restoring any such facility to its capacity prior to such disaster and in conformity with applicable codes and specifications." It included in what was enacted as subsection (b), the provision of PL 91-79 that there would be a 50 percent Federal contribution for repairing public facilities damaged or destroyed in the process of construction. It listed in its third paragraph those facilities named in the previous Act for which the Federal Government would share the 50 percent cost of repair or restoration, and in its words, "any other essential public facility."

The House bill as it came to the conference committee had struck out all the contents of the Senate's S. 3619 after its enacting clause, and had substituted an amendment to PL 81-975 in this language:

(d) by performing on public and private lands protective, emergency, and other work essential for the preservation of life and property; clearing debris and wreckage; making repairs to and replacements of public facilities (including street, road and highway facilities) of States and local governments damaged or destroyed in such major disaster: Provided, That the Federal contributions therefor shall not exceed the net cost of restoring such facilities to their predisaster capacity in conformity with current codes and specifications..." (Emphasis added.)

It is safe to say that only a person familiar with the subject matter would easily conclude that the above description means the same as 100 percent restorative or replacement costs to be borne by the Federal Government. The use of the words "replacements" and the Federal contribution to "not to exceed the net cost of restoring such facilities" suggests the meaning without saying it in so many words. The conference committee chose to settle the differences between the Senate and the House bills by combining the general language and format of the House bill, stating it as "...shall not exceed 100 per centum" of such costs. There were several other changes in the final language of Section 232, all of which were added to further clarify its meaning: the addition of the words "and standards" to the last words in subsection (a); in subsection (c), there was added to the last two lines after the word "highway"--"and any other public building, structure, or system, other than one used exclusively for recreational purposes" in lieu of "and any other essential public facility."²⁴ The administrative determination of what facilities are "exclusively for recreation purposes" was to present thorny problems under PL 91-606, and to be short-lived, giving way to its rescission in the next revision of the Act.

Title III Miscellaneous

SECTION 301, TECHNICAL AMENDMENTS

The purpose of this section was to revise the existing law by making the necessary amendments to conform to the new 1970 Act. As was noted earlier, during the 20-year period in which PL 81-875 had been in effect, numerous provisions had been added by Congress, some of them in the form of direct amendments to PL 81-875, others as collateral actions which depended upon a major disaster declaration. Since PL 81-875 was being repealed, its amendments and ancillary legislation had to be replaced or referenced. Subsections (a) through (l) of Section 301 related to specific Federal statutes being so amended. In this section, each will be briefly referred to.

The last paragraph of Section 301 serves as an all-inclusive catch-all statement covering all references to PL 81-875 not otherwise listed. It reads:

Whenever reference is made to any provision of law (other than this Act), regulation, rule, record or document of the United States to the Act of September 30, 1950, (64 Stat. 1109), or any provision of such Act, such reference shall be deemed a reference to the Disaster Relief Act of 1970, unless no such provision is included therein.

The meaning and intent of each of the listed subsections is explained as follows:

Subsection (a) amends the Housing Act of 1954, Section 701 (a) (3) (b) (ii), making it apply to the new Act of 1970. That particular section of the Housing Act referred to the Section 701 planning grants made available for cities, other municipalities and counties situated in redevelopment areas or economic development districts, as designated by the Department of Commerce under Title IV of the Public Works and Economic Development Act of 1965, which have suffered substantial damage as a result of a major disaster.

Subsection (b) amends the National Housing Act of 1963, Section 8 (b) (2), similarly making it apply to the 1970 Act. This provision related to the eligibility, conditions, and limitations on the amount of mortgage insurance as administered by the Department of Housing and Urban Development. It will be observed that in a number of the subsections, the amending form was to strike out Section 2(a) of PL 81-875 and substitute Section 102(1), in its place. Section 102(1) is identical to the corresponding section of PL 81-875 in defining the meaning of a major disaster, except that the additional types of disaster events had been added.

Subsection (c) also referred to the Housing Act of 1954, Section 203(h), which made mortgage insurance available to the mortgagor who is the owner-occupant of a single dwelling when damaged or destroyed in a major disaster.

Subsection (d) relates to the provision in the Disaster Relief Act of 1966, PL 89-769, Section 4, which extends to the victims of natural disasters the same rights for housing as it does to those families displaced by urban renewal or as the result of other governmental actions.

Subsection (e) served to replace the PL 81-875 reference in PL 90-247, an Act of 1967, "Assistance for Current School Expenditures in Cases of Certain Disasters" in which the Director of OEP was authorized, with respect to any local educational agency (any elementary or secondary public school) to determine that it was located in a major disaster area, leaving to the Commissioner of Education to provide the assistance. It may be noted here that the text of subsection (e) refers to "Public Law 874" instead of 247--an error in the printing.

Subsection (f) is similar to (e) above in that it also refers to replacing PL 81-875 with respect to another Act relating to the public schools, this one, PL 89-313, of 1965, "An Act to provide financial assistance in the construction and operation of elementary and secondary public schools in areas affected by a major disaster."

Subsection (g) also relates to amending an educational act, in this instance, the Higher Educational Facilities Act of 1963. This act had been amended by the Federal Disaster Relief Act of 1966, PL 89-769, which offered to the higher educational facilities the protection and benefits of PL 81-875, now replaced by PL 91-606.

Subsection (h) provides for amending the Internal Revenue Code of 1954 to allow tax deductions for losses occurring in an area subsequently declared eligible for assistance under PL 91-606.

Subsections (i) and (j), also applying to the Internal Revenue Code of 1954, provided for the remission of taxes by the Secretary of the Treasury equal to the amounts paid when the products on which the taxes had been paid were subsequently lost, rendered unmarketable, or condemned. Subsection (i) referred to distilled spirits, wines, and beer, and (j) to tobacco products, cigarette papers, and tubes.

Subsection (k) amended PL 90-617 of 1967, "An Act Providing for Continuance of Civil Government for the Trust Territories of the Pacific," in which the Secretary of the Interior was to determine whether or not a major disaster has occurred "in accordance with the principles and policies of Section 2 of the Act of September 30, 1950."

Subsection (l) is self-explanatory. It states that "Whenever a reference is made to any provision of law, regulation...or document" to the Act of September 30, 1950 (PL 81-875), it "shall be deemed to be a reference to the Disaster Relief Act of 1970" (PL 91-606).

SECTION 302, REPEAL OF EXISTING LAW

In a single declarative sentence, Section 302 repeals the three previously enacted disaster relief acts of 1950, (Public Law 81-875), 1966 (Public Law 89-769), and 1969 Public Law 91-79)

SECTION 303, PRIOR ALLOCATION OF FUNDS

This section has an interesting history that is in itself illuminating on how Congress regards funding its disaster relief programs. In S. 3619, Section 303, "Authorization of Appropriations," had stated that, except as provided separately in Sections 206 and 241 (State Disaster Plans and Community Disaster Grants), such sums as may be necessary would be authorized to be appropriated to carry out the provisions of the Act. According to the Conference Report, it was decided that such a funding authorization was not necessary "since the Act itself authorizes whatever sums are needed to carry it out."²⁵ In its place, a new Section 303 was added that, to those not familiar with the situation to which it refers, appears obscure. It refers to "funds allocated before the date of enactment of this Act" under existing Federal-State Disaster Assistance Agreements "not expended" on the date of its enactment for which the State may "make payments to any person for reimbursement of expenses actually incurred by such person in the removal of debris from community areas" less their salvage value. The reference is, of course, to Section 14 of PL 91-79. Why the conference committee chose this lapsing and improbable section on which to prove that the Government always meets its prior obligations (even when changing its law) is not without a touch of humor. One may suppose that some of the Members of Congress were being dunned by their constituents to get paid for the cost of debris removal under PL 91-79 over a year after that law

was passed. This apparently was Congress' whimsical way of affirming in the statute a fundamental principle that fund obligations under a previous law are to be discharged, and at the same time assuring this particular group of constituents that they would be paid.

SECTION 304, EFFECTIVE DATE

This section explained that the Act shall take effect immediately upon its enactment, i.e., normally upon the approval of the President, except for certain sections of the Act that were to be retroactive. Congress desired that the provisions in the newly added sections should be made to apply to the Hurricane Camille disaster States; therefore the following sections were made retroactive to August 1, 1969: Section 226(b), mortgage and rental payments under Temporary Housing Assistance; Section 237, Aid to Major Sources of Employment; Section 241, Community Disaster Grants; Section 252(a), 100 percent payment for permanent restoration (instead of 50 percent) of State and local government facilities; and Section 254, Relocation Assistance.

A second group of sections in PL 91-606 pertaining to disaster loans was made retroactive to April 1, 1970, viz., Section 231, Small Business Disaster Loans; Section 232, Farmers Home Administration Emergency Loans; and Section 233, Loans Held by the Veterans Administration. This change would, of course, allow an increase in the loan forgiveness from \$1,800 to \$2,500 and extend the assistance of the Veterans Administration. Between April 1, 1970, and December 31, 1970, the date on which PL 91-606 took effect, 14 major disasters had been declared. It may be presumed also that Congress desired to extend the additional loan forgiveness to these additional States.

CHAPTER V

FOOTNOTES

1. Congressional Record, December 18, 1970, page 42366.
2. See "Federal Response to Hurricane Camille," Parts, 1, 2, 3, 4, and 5, Hearings before the Special Subcommittee on Disaster Relief of the Committee on Public Works, U. S. Senate, 91st Congress, 2nd Session. Parts 1 and 2 are the hearings at Biloxi, Mississippi, January 7, 8, and 9. Part 3 at Roanoke, Virginia, on February 2 and 3. Parts 4 and 5 cover the Washington hearings on Senate bills S. 3619 and S. 3745 on April 27, 28, 29 and May 21 and 22. According to the House Report 91-1524, the House Committee on Public Works also held hearings in the Camille area soon after the hurricane, but these were likely informal unscheduled hearings and according to the Committee's files, were not published. House Report No. 91-1524, page 5491, U. S. Code Congressional and Administrative News, 91st Congress, 2nd Sessions, Legislative History, PL 91-606.

The best summary of the Disaster Relief Subcommittee's findings is stated in the Senate Report of the Committee on Public Works in its report on S. 3619, Report No. 91-1157, "Disaster Assistance," August 31, 1970, page 4 which follows:

The Committee hearings this year have disclosed certain gaps in legislative authority and some deficiencies in administrative organization and operation which should be rectified. Among the most frequently voiced significant suggestions and needs relating to disaster assistance programs which have come to the attention of the Special Subcommittee on Disaster Assistance are the following:

1. delays and problems encountered in the provision, distribution, and leasing of temporary housing;
2. the insufficiency of insurance coverage and slowness in settling insurance claims;
3. the need for establishing immediate, effective communication systems;
4. inadequate centralized, coordinated administration and supervision;

5. relief for local governments not able to meet bonded indebtedness, matching requirements under Federal grant-in-aid programs, or essential public services, because of diminished tax base;
 6. advantages to be gained from previously established State disaster plans providing systematic programs for refugee evacuation, emergency food and shelter, and longerrange assistance to individuals, organizations, and communities;
 7. need for trained emergency support teams with capability of immediate deployment in major disaster areas;
 8. need for emergency public transportation systems to provide access to such vital places as governmental offices, supply centers, stores, post offices, schools, and major employment facilities;
 9. charges of inequitable and discriminatory treatment, by both public and private agencies;
 10. failure to recognize officially more than one charitable organization for the purpose of distributing goods and commodities provided by the United States;
 11. lack of adequate dissemination of information and clear explanation about available benefits; need for assistance in the preparation of simplified application forms for various programs; and need for legal assistance for low-income disaster victims; and
 12. larger Federal assistance to those whose homes, farms, and places of business have been damaged or destroyed.
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3. The entirety of S. 3619 appears in Senate Hearings, Part 4, pages 1404-1462.
 4. See *ibid.*, pages 1463-1477.
 5. See House Document No. 91-323, "Disaster Relief" Message of the President of the U. S. 91st Congress, 2nd Session. For a detailed description of the record of OEP in the recent disasters, see Part 4, pages 1537-1767.

6. Senate Report No. 91-1157, pages 35-36. Senator Dole was a co-sponsor of S. 3745 as were also Senators Bayh and Randolph who was Chairman of the Committee on Public Works.
7. See Senate Report No. 91-1157, "Disaster Assistance," August 31, 1970, referred to above.
8. See House Report No. 91-1524 in U. S. Code, Congressional and Administrative News, 91st Congress, 2nd Session, pages 5486-5497.
9. Ibid., pages 5498-5519.
10. Senate Report No. 91-1157, page 10.
11. See Hearings, Part 2, pages 953-961, "Recovery on the Mississippi Gulf Coast"--Report by a Special Task Force of the Office of Emergency Preparedness and the Mississippi State Research and Development Center," December 5, 1969.
12. The result of this effort was OEP's "Report to Congress-- Disaster Preparedness," Volumes I, II, III of January 1972, a most comprehensive analysis of disaster preparedness in all its aspects--physical studies, findings and recommendations for disaster mitigation.
13. Conference Report No. 91-1752, page 5502.
14. For a comprehensive report of Red Cross' activities in Hurricane Camille, see Hearings, Part 5, pages 2309-2411.
15. See Hearings, Part 1, for example, Report of American Friends Service Committee, pages 692-710, and by representatives of the NAACP, pages 637-662, 805-833.
16. Senate Report No. 91-1157, page 8.
17. See discussion in Report of HUD, pages 1802-1845.
18. A detailed explanation for Section 233 is found in Senate Report No. 91-1157, page 19.
19. Ibid., page 21.
20. Congressional Record, December 18, 1970, page 42368.
21. These conclusions are based on interviews with staff members of former OEP Region IV in Atlanta which handled the claims in Mississippi and Alabama.

22. Ibid., page 42366.

23. Ibid., page 42367.

24. It has been noted in Chapters I and IV that in the original act, PL 81-875 in Section 3 in providing for emergency repairs and temporary replacement of public facilities made no reference to the facilities having to be "essential". This was the interpretation imposed on the language by the administering agencies and it was never challenged. Even Congress, as noted here accepted that interpretation as the meaning of the law.

25. Conference Report No. 91-1752, page 5518.

CHAPTER VI. INTERIM AND AGNES LEGISLATION

At the time when Congress passed Public Law 91-606--judging from the debates in both chambers--a general optimism prevailed that the new act embodied in it just about everything that was needed to discharge the Federal Government's obligation for disaster relief. Those who had studied the problem were probably under no illusions about its perfection, but they did believe that it would serve the country's need for some time without having to be changed. And in fact, PL 91-606 did endure for almost 3-1/2 years before it was replaced by the Disaster Relief Act of 1974.

It did not take long, however, before new problems arose for which PL 91-606 had little or no remedy, and which Congress believed it necessary to redress. During the interim period between the passage of PL 91-606 and PL 93-288, two important laws were enacted--Public Law 92-209 in December 1971, which provided for "Private Medical Care Facilities," and Public Law 92-385 in August 1972, which provided for a drastic change in Federal disaster loan and forgiveness policy. While both laws were in the form of general legislation, their origin and the constituencies that they served suggests that they were as much special legislation as some of the earlier acts specifically naming certain States that would benefit thereby.

The first originated because of the need to restore two large, private medical-care hospitals damaged or destroyed by the San Fernando earthquake. The second responded to the needs of the victims of Tropical Storm Agnes. In the few short weeks since June 1972, when the storm descended on the four mid-Atlantic States, so much human misery had accumulated that Congress felt impelled to provide further aid. In passing PL 91-606, no one had anticipated that the law would be called upon to meet disaster needs and demands of this magnitude; if the Federal Government was expected to "make whole" the economic condition of the thousands of Agnes victims, the law would be inadequate, as the protagonists of a more liberal policy claimed. In any case, within a month after the Agnes storm, there was no longer a conviction that the system of Federal disaster relief established by PL 91-606 was sufficient. One important provision of the new SBA law (PL 92-385) directed the President to conduct a thorough review of existing legislation and to report by January 1, 1973, specific legislative proposals for a comprehensive revision.

I. Public Law 92-209, "Private Medical Care Facilities"

The San Fernando earthquake of February 9, 1971, occurring only forty days after the enactment of PL 91-606 and the first major disaster to be declared under the new law, precipitated the consideration of how to repair and restore private hospitals that had suffered severe damage in the quake. As many as 15 hospitals had been damaged, most of them private, with minor damage, but four had estimated repair and restoration costs running into the millions. Two of these hospitals, the Veterans Hospital and the Los Angeles County Olive View Hospital, were publicly-owned facilities which clearly came under section 252 of PL 91-606, authorizing up to 100 percent Federal funds for their repair and restoration. Two other large hospitals, Pacoima Memorial Lutheran and Holy Cross, were both privately-owned and nonprofit, and would almost certainly not be restored to community use without government financing. The cost of repairing the Lutheran hospital was estimated at \$6.5 million, while repairing the Holy Cross Hospital would exceed the cost of replacement, estimated at \$11,000,000. During hearings conducted by the Senate Public Works Committee in San Fernando on June 10-12, 1971, the medical community presented convincing evidence that the San Fernando area of half million persons relied on these major medical facilities being put back into operation. As one hospital official put it, "Approximately one-quarter of the acute-care beds were demolished and taken away by this disaster and those will not be returned unless we have some help from the Federal Government."¹

A bill (S. 1237) was introduced in the Senate on November 3 by Senators Tunney and Cranston of California to amend PL 91-606, providing that private, nonprofit medical care facilities would be entitled to the same benefits as damaged public facilities under Section 252 of the Act. Similar bills (H.R. 6834 and H.R. 7754) were also introduced in the House by California Representatives Corman, Anderson, Goldwater and Clausen. Thus, the needs of the two San Fernando hospitals could be served by adding this provision as a part of general legislation. It was argued that restoration and replacement of essential medical care facilities were as necessary as were restoration and replacement of any other type of public facility now provided in the law, and that it was unrealistic to expect such needs would be filled by private hospitals run for profit. Indeed, 92 percent of all beds in nongovernmental general community hospitals nationwide are in nonprofit hospitals, many of which were partially federally funded under the Hill-Burton program. Also, as Senator Cranston pointed out, "Private

nonprofit hospitals are increasingly financed by debt rather than by philanthropic donations."² It was unreasonable, therefore, to believe that the San Fernando hospitals could be restored without additional financing. Moreover, it was argued that knowledge that the law would in the future assure damaged nonprofit hospitals of funding for reconstruction would enable hospital administrators to hold on to their staffs during a period of reconstruction.

The Senate bill (S. 1237) passed both chambers with a minimum of discussion and without controversy, and became effective on December 8, 1971.³ The act comprised three subsections of a new Section 255. The first authorized the President to make grants for the repair, reconstruction or replacement of any medical care facility damaged or destroyed by a major disaster which was owned by an organization exempt from taxation under the Internal Revenue Code. The second, using the same formula for reimbursement as Section 252 for damaged public facilities, authorized 100 percent of the net cost of repair or replacement and 50 percent of the cost for restoring facilities damaged while under construction to their condition prior to the disaster. The third defined the meaning of a "medical care facility" eligible under the act as in Section 645 of the Public Health Service Act or any similar facility, viz., any hospital, diagnostic or treatment center, or rehabilitation facility.

Although the wording of PL 92-209 seems clear, it may be helpful to refer to the debates and the House report to understand its legislative intent. Congressman Clausen, the ranking minority member of the Committee on Public Works, pointed out that while the act did not specify to whom the grants were to be made directly, it was the intent of the Committee that "this grant money was to be provided through State and local governments," consistent with Section 252 of the Act. He went on to say, quoting some of the language of the House report:

It is not the intent of the committee that disaster relief assistance be granted such facilities without regard to a consideration of the public benefit to be derived... It is the intent of the committee that an eligible nonprofit medical facility be one that is in active use and providing significant medical services to the general public prior to the disaster, or be an eligible medical-care facility under construction. Replacement would be on the basis of need to insure the community's health care, consistent with the comprehensive plans of the affected area.⁴

The report recognized that in providing Federal funding for disaster-damaged private medical-care facilities, it was setting a precedent for other types of nonprofit organizations which would appeal to Congress for the same benefits, even though medical-care facilities served a critical emergency need in disasters. The committee, however, absolved itself of responsibility for initiating a more expansive policy.⁵ However, the effects of the Agnes disaster soon presented Congress with having to open the door of Federal reimbursement to another class of nonprofit organization, the private nonprofit educational institutions.

II. Public Law 92-385, Disaster Victims--Loan Assistance

The provision of low interest loans by Congress as a form of disaster relief had been in existence long before the first general disaster relief act of 1950. Non-agricultural disaster loans had begun in 1933 when Congress authorized the Reconstruction Finance Corporation to lend a total of \$5 million to nonprofit corporations organized to finance the repair of buildings damaged by the Long Beach, California earthquake.

The loan assistance laws since that time have gone through almost innumerable changes both before and since the function was taken over by the newly established Small Business Administration in 1953. The number of changes in the law that have taken effect are so numerous that one must wonder that the SBA has been able to administer what must at times have appeared to be a kaleidoscopic program, involving a loan portfolio with different rates of interest applying to different categories of loans, maturities of loans, changes in retroactivity of application, amounts of forgiveness, policing what the loans could be used for, whether or not private credit was available and at a reasonable cost, etc. In fact, in each recent change in the Federal disaster relief legislation--in 1966, 1969, and 1970, there had been some specific provision regarding disaster loans--rates of interest, availability of credit, maturity, waiver of payments, and forgiveness.

By the time of the great Agnes disaster, the Federal Government was already deeply involved in disaster loans, having accumulated a portfolio that ran into the hundreds of millions. In just the year and a half in which PL 91-606 had been in effect, from January 1, 1971, through June 31, 1972 (before the Agnes applications were approved), SBA disaster loans totalled 101,698 and the amount loaned was \$346,719,000.⁶ It is hardly a surprise therefore, that when Congress came to consider what

further relief could be offered the victims of the Agnes storm that the disaster loan policy became the preeminent topic for decision. What is surprising, however, is the length of the debates on this topic and the vehemence with which the various positions were argued. In the short period between June 29 when the House first considered the SBA legislation and August 16 when the President signed the act, more pages of the Congressional Record were consumed in the debates on the passage of this bill than the total of all the discussions on passing the previous half-dozen disaster relief acts!

To attempt an explanation of the passage of this legislation in a sequential round-by-round narrative (as has been done in explaining the disaster relief acts in this history) would be most confusing, and of little profit to the reader. Many bills were introduced, starting with that of Congressman Abourezk of South Dakota who sought further financial aid for the victims of the Rapid City flood which occurred earlier in the month of June. Other bills soon followed as the enormity of the Agnes losses became apparent. It may be noted here that consideration of loan policy and interest rates came under the jurisdiction of the House Committee on Banking and Currency and the Senate Committee on Banking, Housing and Urban Affairs, rather than the Committees on Public Works which had shaped the disaster relief laws.

Also of interest is the fact that the initiative in developing this legislation was taken in the House (rather than the Senate) with strong support from the Administration. There were many variations in the provisions as the bills were presented, with further modifications offered from the floor, and still others which originated in executive sessions of the committees. The stakes at issue were high, representing many dollars to the Congressmen's constituents. Where most previous disaster relief acts were cast to give benefits into the unknown future when no one could forecast where and when the disasters might occur, or who would receive their benefits, this effort mainly involved known beneficiaries: the victims of Agnes and whomever else Congress might choose to include in the new law.

Three fundamental points were at issue: interest rates, forgiveness, and beneficiaries. With respect to the first, existing law (PL 91-606) had set a single interest rate for both SBA and FMHA at the fluctuating Treasury rate--then at 5-1/8 percent, but in no case to go beyond 6 percent, which was considerably higher than the previous rate of 3 percent. Secondly, on the matter of forgiveness, PL 91-606 had raised it from \$1,800 to \$2,500, but had provided that

such cancellation applied only to the amount of a loan in excess of \$500, requiring the applicant to bear the first \$500 of his loss. Also, the act limited the loan to cover only actual losses and damage, and could not be used to refinance existing mortgages. The law did provide authority to both SBA and FmHA to defer payments on principal and interest for three years, and stated that loans could be made without regard to availability of credit from other sources. The third source of contention, on which there was often highly heated arguments, was on who should be included as beneficiaries. The main dispute involved the question of retroactivity--that is, on which date or dates the new law should take effect. There was also argument on whether FmHA's agricultural clients should be included in the act at all. If the retroactive date were to be moved back, how far back should it go, and should the victims of the earlier disasters who had benefitted from the forgiveness feature in PL 91-606 receive the same benefits as those in the most recent declarations? At one point in the House debates, when a Member urged that the new act be predated two full years to July 1, 1970, Congressman Gross of Iowa asked "How about the Chicago fire, and indemnification for Mrs. O'Leary's cow?"⁷ There were no easy answers to framing a policy that in the minds of the members of Congress best satisfied the needs of the country and at the same time secured equivalence for those States with recent declared disasters.

As indicated, a description of how the resultant act, PL 92-385, evolved on a step-by-step basis would be most confusing. Instead, the main provisions of the act will be summarized first, section-by-section, and afterwards the principal points of controversy will be outlined to assist in understanding how they were resolved in the final act. It will be noted here that by the time the original House bill H.R. 15692 reached and came out of the Conference Committee, it had accumulated a number of provisions that were somewhat remotely related to its original purpose.

The primary substance of PL 92-385, so far as disaster loan assistance is concerned, was included in its first section. Although the language employed in describing its provisions seems obscure enough to frustrate the proverbial Philadelphia lawyer, it provided for the following: (a) Total forgiveness for all loans made during the calendar year of 1971 (January 1, 1971, through December 31, 1971, after the enactment of PL 91-606), would remain at \$2,500 except that the borrower need not pay the first \$500 that was ineligible under PL 91-606, and the interest rate on the balance remaining on these loans at the date of enactment

of this law would be set at 3 percent per annum. (B) Total forgiveness for all loans made during the period of January 1, 1972, to July 1, 1973, was set at \$5,000 for each loan and the interest rate was reduced to 1 percent per annum. The elapsing or closing date chosen (July 1, 1973) marked the end of the current fiscal year. Congress apparently regarded this as temporary legislation which would be replaced the following year after the Presidential review provided for in Section 3 of the act. (c) Where PL 91-606 had limited SBA loans to the cost of repairing damage or restoring a home or business, PL 92-385 authorized SBA loans to cover not only the cost of damage repair but also the refinancing of the entire amount of an existing mortgage at the rates determined above, depending on the period during which the loans were made, i.e., either at 3 percent or 1 percent. This was of course, an enormous benefit to mortgagors, and especially those with large indebtedness for whom the savings in interest on 30-year mortgages greatly exceeded even the amount of the increased forgiveness. The law did provide, however, that monthly payments on such mortgage refinancing could not be less than they were prior to the disaster.

The act also included special provisions for cases of severe financial hardship. For retired or disabled persons who relied for their support on retirement, disability, payments, or similar incomes, SBA could consent to a suspension of payments of principal and interest for up to 5 years. Similarly, based upon an administrative determination of hardship, SBA could allow suspension of payments on principal during the lifetime of that individual or his spouse. In drafting this act, Congress also took cognizance of certain abuses of disaster loans that were reported to have taken place after the San Fernando earthquake disaster of February 1971. Newspapers had carried stories of people misapplying funds received from SBA to objects other than the repair of their homes, such as purchasing automobiles, swimming pools, etc. The new law required that disaster loan funds could be used only for the repair or replacement of homes or businesses; whoever wrongfully misapplied proceeds of such a loan would be civilly liable for SBA for 1-1/2 times the original principal amount of the loan.

Two sections of the Act appear to be relatively extraneous to the subject matter. Section 2 provided authority for SBA to make loans for small business firms seriously affected by international agreements limiting the production or installation of strategic arms (SALT agreements) in order to reduce substantial injury resulting from such agreements. Section 6 amended PL 91-606 (Section 231) to provide authorized SBA loans to small

business concerns with working capital and payment of operating expenses and other purposes as authorized under Section 7(c) of the Small Business Act.⁸

Section 3 also appears to be an anomaly in this act, which created such great disparity in terms of fairness and consistency between its beneficiaries and the benefits received by previous disaster victims under the earlier laws. It directed that "the President shall conduct a thorough review of existing disaster relief legislation, and not later than January 1, 1973, he shall transmit to the Congress a report containing specific legislative proposals for the comprehensive revision of such legislation..." The objects were stated to be: (1) the standardization of benefits to achieve fairness and consistency as to preclude the need of separate legislation in future disasters; (2) improvement of execution of the Government's relief program by reduction of administrative procedures, the number of agencies involved and by increasing agency authority and responsibility; (3) prevention of misuse of benefits.⁹

Important subject matter extraneous to its original purpose was also added by Section 4. By the time H.R. 15692 came to be considered more intensively, new unresolved problems had emerged from the crisis created by the Agnes storm. A number of parochial schools and church colleges had been badly damaged, and it was questionable whether their repair could be funded without outside help. Section 4 resolved the matter by extending to them the same benefits as PL 92-309 had provided the previous year to nonprofit medical facilities, using exactly the same language: 100 percent reimbursement for the repair of ongoing and completed facilities, and 50 percent reimbursed costs for facilities damaged or destroyed while under construction. Section 4 required that such schools must be nonprofit and must be exempt from taxation under the Internal Revenue Code of 1954. By reference, acts governing elementary and secondary schools and the Higher Education Act were cited to define their eligibility. In contrast to PL 92-209, in which Congress had made no mention of why it would fund disaster repair for nonprofit medical facilities, Section 4 defended paying the costs of repairing church-owned schools. It noted that "nonprofit, private educational institutions" perform a "secular educational mission" comparable to public educational institutions, and that if they were not repaired and restored, public educational institutions would have to bear the cost of educating their students. Section 4 included a caveat that none of the funds provided by this section could be used to pay any part of the

facilities, supplies or equipment used "primarily for sectarian purposes..." or "primarily for religious worship."

Section 5 of the act set forth loan policies to govern the Consolidated Farmers Home Administration (FmHA). The House bill contained no provision regarding agricultural loans. A number of Senators from agricultural States argued strenuously that the bill ought also to provide similar financial aid for farmers in recent flood disasters.¹⁰ In language quite dissimilar to the provisions governing SBA loans, Section 5 authorized loan assistance to farmers that was largely equal to help from SBA. The incidence period, however, was different; instead of the longer period from January 1, 1971, FmHA loans were available for declarations made after July 1, 1971, and before July 1, 1973. The amount of forgiveness also followed a different formula: it was authorized at 50 percent of the loan's original principal up to a maximum of \$5,000 or at the percent cancelled by SBA for a loan of the same size, whichever was greater. The interest rate, too, was fixed at the lower of either the rate provided by PL 91-606 (the Treasury rate) or that established by SBA under this new act. Likewise, while SBA was authorized to refinance the balance owing on existing mortgages without regard to whether private credit was available, FmHA loan credit for refinancing was more limited.

It required that the borrower demonstrate inability to obtain sufficient credit elsewhere at reasonable rates and terms to finance actual needs. Moreover, although SBA could allow a suspension of payments in cases of financial hardship for as long as five years, FmHA was limited to deferring payments for up to three years. Nor did Section 5 include the SBA loan provisions which permitted suspension of payments for retired or disabled persons or reference to the penalties for misuse of loan funds. It did, however, include a separate provision (similar to that in Section 3) in which the President was directed to "conduct a thorough review of existing disaster relief legislation as it relates to emergency loans and housing loans administered by the Farmers Home Administration." Although stated in slightly different language, the President's report was to be transmitted to Congress' respective Committees on Agriculture by January 31, 1973.

Having summarized the contents of PL 92-385, the finished product of almost two months of extended debate and controversy, we may briefly examine the record to see how this law evolved. As is typical of most disaster relief legislation, the written record is fragmentary with wide gaps, suggesting that much of it was drafted in committee. The debates in the Congressional Record are virtually silent

on several important sections in the law, such as, for example, the directive to the President to conduct a review of the existing laws and the providing of financial aid to nonpublic schools and colleges. Moreover, the discussion in the Record on aid for agricultural loans does no more than focus on the need. It does not offer any suggestions on how the decision in Section 5 was reached. As noted earlier, the bill (H.R. 15692) to extend further relief on SBA loans originated in the House, and it became the main vehicle, selected from several similar bills in early June. It was offered under the House rules as an emergency bill, and related only to SBA loan policy for presidentially declared disaster areas, and for disasters declared after July 1, 1971, and had no termination date. The bill proposed two options for the disaster borrower: (a) an interest rate of 1 percent per year without any forgiveness of principal; or (b) a 3 percent rate of interest with a forgiveness of 25 percent of the loan not exceeding a maximum of \$2,500. It also proposed penalties 1-1/2 times the amount of the loan for misapplication of loan funds.

The ensuing debate revolved mainly about two subjects: first, whether or not the 25 percent limitation on forgiveness should apply; second, retroactivity. Almost no discussion took place on the wisdom of the 1 percent interest rate, which obviously offered greater advantages to the borrower of large loans. Those who opposed it indicated that its overall effect was to reduce the existing forgiveness benefits of \$2,500 to an estimated 98 percent of the applicants, since few disaster loans came to as much as \$10,000, at which point the 25 percent provision would equal the benefits in PL 91-606. The proponents of the 25 percent limitation held that it would keep people from applying for more than they needed to repair their homes since they would have to pay 75 percent of the borrowed amount. The other principal argument centered on the date of retroactivity. Since the date of July 1, 1971, excluded those who had received SBA loans in the San Fernando earthquake, and for other declarations preceding this date, it was argued that the bill should have an earlier effective date. The opponent of an earlier date urged that the SBA was already swamped by the new Agnes disaster, and that an orderly conduct of its business required a shorter period of retroactivity. When the House passed H.R. 15692 on June 29, the only change was the elimination of the 25 percent forgiveness limitation.

By the time H.R. 15692 had been passed by the Senate on August 4, it had accumulated a number of other provisions. By that time, the enormity of the losses caused by the Agnes disaster was perceived, and it was felt that the legislation should focus on providing more assistance for recent disasters

rather than adding benefits for older declarations. This was settled by having two cutoff points: the calendar year of 1971, during which the forgiveness under PL 91-606 would be unchanged but with a reduced interest rate of 3 percent, and the period from January 1, 1972, to July 1, 1973, in which the forgiveness would be increased to \$5,000 with an interest rate of only 1 percent. For a time, there was some consideration of whether the Senate would approve the \$5,000 forgiveness for all losses of that amount or over. Senator Taft of Ohio proposed an amendment¹¹ by which the amount of forgiveness would be pegged to the applicant's income on a sliding scale: 100 percent forgiveness only for those with an annual income of \$6,000 with a 4 percent drop in the amount of forgiveness with each \$1,000 of annual income beyond that amount. Senator Taft, arguing against the "free money" practice that had developed in the San Fernando disaster, said that it was not fair to give equal forgiveness to the rich who did not need it. In the end, the Senate instead followed Senator Randolph's exhortation to reject the Taft amendment and, in his words, to "make assistance available evenly and without discrimination to all who need it."¹²

III PUBLIC LAW 92-385 IN PERSPECTIVE

The rest of this chapter will be concerned with an evaluation of the long-range aspects of PL 92-385 and of the problems involved in revising disaster relief legislation. This was obviously an important piece of legislation, even though it remained on the statute books only until April 20, 1973, several months before its declared termination date. Just four months after enacting PL 92-385, in December 1972, the Department of Agriculture suspended making all emergency-disaster loans by administrative decree. Four months later, Congress, on April 20, 1974, passed PL 93-24, which cancelled forgiveness entirely and raised the interest rate on disaster loans to 5 percent. Such was the brief life of PL 92-385. Whatever may have been its motivation, it proved but a fleeting aberration from the norms of disaster relief that Congress was willing to support for the long term. Compared to the legislation that preceded it, it was magnanimous in its bounty and was proving to be an excessive drain on the Treasury.

It is apparent from reading the record that when Congress passed PL 92-385 there was little realization of what this new law would cost. It is understandable that there is no way of predicting disaster costs of this kind prospectively, as the Senate Committee's report of August 1 admitted.¹³ SBA had estimated the total incremental cost of the

program on existing loans at \$160 million, of which \$15 million would be interest loss, \$145 million incremental forgiveness. But there were no estimates made for similar costs for that time, and they could hardly be guessed at. But it is worth noting that in the entire legislative record, almost no one ventured to suggest that the total cost of the law might well go beyond what Congress would consider to be a reasonable limit. The magnitude of the Agnes disaster and the needs of its victims made considerations of cost of little concern.¹⁴

The effects of Tropical Storm Agnes, particularly by the flooding of the Susquehanna River on June 23-24 in the Wyoming Valley of Pennsylvania, were so catastrophic and pervasive that it was soon apparent that extraordinary measures would be required. On July 12, President Nixon issued a statement describing the Federal Government's efforts in this "unparalleled disaster," and recognized soon thereafter that additional actions would have to be taken. Thereupon, he sent a message to Congress outlining his proposed three-part program. First, what he called the Agnes Recovery Act of 1972, which contained the substance of loan forgiveness and low interest loans contained in PL 92-385. Secondly, he recommended supplemental appropriations totalling over \$1.5 billion to fund the new loan provisions and to augment the President's Disaster Relief Fund and other related activities. Third, he asked that the highway emergency fund be increased beyond its existing limits from \$50 to \$200 million. Thus, it will be noted here that the contents of PL 92-385 were part of the President's larger program.¹⁵

A second political aspect of PL 92-385 is concerned with its retroactivity feature. As has been observed, the act established two separate periods of incidence to govern the amount of forgiveness and the rate of interest. For disaster declarations from January 1, 1971, through December 31, 1971, the \$2,500 of forgiveness was unchanged, but the interest rate was reduced to 3 percent. For disasters from January 1, 1972, through June 30, 1973, the forgiveness was increased to \$5,000 and the interest rate set at only 1 percent. It seems clear from a reading of the record that the dates of retroactivity were established largely on the basis of bargaining, accommodation and compromise rather than on principles of equity. The debates in both chambers centered less on what the substance of the law would consist of, i.e., the amount of forgiveness and the rates of interest, than on who would receive the benefits. Obviously, the determination of the retroactive date for past disasters was the equivalent of providing special legislation, even though

not stated as such. The determination of a retroactive disaster date on which this act would become effective constituted a Federal grant to the victims of that disaster just as if it were accomplished by a special act.

Under the circumstances, the issue of determining the date for the retroactive effect of PL 92-385 was bitterly fought over, based on the dates of each State's recent major disaster declaration. This was not, of course, the first time the date of retroactivity had figured as important in drafting a disaster relief act. PL 91-79 passed in 1969 had gone back to 1967 for its effective date to help secure a passing majority. But now that the stakes in the new benefits to be conferred by PL 92-385 were so high, the determination of the law's effective date was of more importance than before.¹⁶ If there is any lesson in this, it is that once it is proposed to make any significant changes in the disaster relief benefits there is a good chance that the legislative process will gather issues and pressures often unrelated to the original proposal, and that retroactivity will almost surely become one of them -- as was to be demonstrated again in 1974.

In this connection, the comment of Senator Taft of Ohio has some relevancy:

Mr. Taft: ...Mr. President, the feeling I had with regard to this issue was this; there really is no fair date to choose if we are going to be going back at all beyond the date of enactment. Yet, we do recognize, as the Senator from Pennsylvania so well documented, the tremendous nature of the loss that occurred as a result of Hurricane Agnes. We recognize the loss on a really widespread basis resulting from Hurricane Agnes and also the loss to people involved in the Rapid City disaster. The primary purpose of our legislation would relate to those two disasters. If we look beyond that, we can find disasters in some part of the United States, either SBA-recognized or presidentially-recognized, going back to the early days of our country's history.¹⁷

This analysis would not be complete were it not to take note of the implications of Section 3 of the act. In this section, the President was directed to conduct a thorough review of the disaster relief legislation and report to Congress on how it could be improved, particularly, with reference to standardization of benefits to achieve fairness and consistency and also its procedures and execution. The explanation for including this provision in the act is well stated by the Senate Committee in its report:

It is the feeling of your Committee that previous attempts by Congress to establish a comprehensive disaster relief program have not been successful as is evidenced by the legislation before us today. The Disaster Relief Act of 1970 was passed by Congress to establish a permanent ongoing program. However, as has happened so often in the past when extremely severe disasters strike, there is an immediate reaction to pass additional disaster relief legislation. Your Committee is concerned that this is not the proper and best intentioned approach and by terminating this legislation at the end of this fiscal year the Committee intends that a national disaster relief program could be established on a permanent basis that would improve the execution of the program by eliminating unnecessary administrative procedures and reducing the number of agencies involved in disaster relief program and prevent the misuse of benefits.

Your Committee concludes that a permanent disaster relief program is of utmost importance. Disaster victims must be assured that they will receive the same type of assistance as is granted to other victims and only a comprehensive program can bring about the result.¹⁸

It should be pointed out again that the Senate and the House Committees on Banking which framed PL 92-385 are not the same ones which developed PL 91-606 or earlier disaster relief legislation. Nor did these committees have jurisdiction over disaster relief policy in general. During the debates, the Senators were reminded by Senator Bayh that he thought PL 91-606 was a pretty good act, even to the extent of having the entire act reprinted in the Record. At the time, it had been passed there appeared to be a rather solid consensus that it would stand on the statute books for some time. By August 1, 1973, at the time the Banking Committee report was written, it was probably too early in the Agnes disaster for much dissatisfaction to have been registered regarding OEP's management, especially with respect to matters referred to in the act such as "unnecessary administrative procedures," "reducing the number of agencies involved," etc. In fact, at this time, just prior to the Agnes floods, OEP seems to have been enjoying some estimable prestige under the directorship of General Lincoln. The record is not clear as to the origin of the Section 3 proposal. Conceivably, it may have originated in the White House, which at this time was

interested in a major reorganization of executive departments and agencies, based largely on recommendations of the so-called Ash Council. In any case, Section 3 set the stage for the next episode in developing a new disaster law, which resulted in the introduction in 1973 of the Administration's "Disaster Preparedness and Assistance Bill of 1973," which will be discussed in the following chapter.

There appears to be an inherent contradiction in the section 3 directive to the President to seek standardization of benefits and permanency in the disaster relief program which is set forth in an act doing exactly the opposite. What law could create greater disparities of benefits or conditions of greater impermanence than this one? PL 92-385 established formally for the first time two entirely different systems of disaster benefits under Federal law for the same kind of declared disasters. It established them at levels of cost to the Government that, however altruistic in motive, should have been explored to determine whether or not these levels could be reasonably sustained on a permanent basis. The fact that the act had a termination date of less than a year might suggest that Congress was itself in doubt of its wisdom. In the parlance of politics, because of the passage of PL 92-385, the disaster relief program had become a "hot potato," and Congress was asking the President to restructure its benefits. As the next chapter unfolds, the ball was in the President's court.

CHAPTER VI

FOOTNOTES

1. Hearings of the Committee on Public Works, U.S. Senate, 92nd Congress, 1st Session, June 10-12, 1971, San Fernando, California Governmental Response to the California Earthquake Disaster of February 1971," page 877. For other statements concerning the earthquake's effects on medical facilities, see pp. 856-921.
2. Congressional Record, November 3, 1971, p. 39015. Senator Cranston stated in 1969, of the \$2,260,000 spent on private hospital construction, \$1 billion came from gifts, \$110 million from Hill-Burton funds and \$1,150,000,000 was derived from other sources, primarily debt financing.
3. It was passed in the Senate on November 3, in the House on December 6, as amended, and finally passed on December 8 as the Senate concurred in a House technical amendment which referred to the Public Health Service Act.
4. Congressional Record, December 5, 1971, page 44942. See also House Report No. 92-690 in U.S. Code Congressional and Administrative News, 92nd Congress, 1st Session, 1971, pp. 2280-2282.
5. "The Congress recognized that in extending Federal aid under this legislation to eligible nonprofit medical facilities, questions would arise as to the precedent established. The extension of like Federal disaster aid to other types of nonprofit facilities is not contemplated." Ibid., p. 2282.
6. Congressional Record, August 4, 1972, page 26837; also in U.S. Code and Congressional and Administrative News, 92nd Congress, 2nd Session, 1972, in Senate Report on H.R. 15692, p. 2950.
7. Congressional Record, June 29, 1972, p. 23404.
8. The Senate bill had also included a section that would have enabled SBA to make economic disaster loans to small businesses required to comply with new Federal and State statutes dealing with mine safety, meat inspection, and occupational safety and health. The conferees decided to drop this section from its reported bill. Congressional Record, August 14, 1972, p. 28109.
9. It is interesting to note that the Conference Report contained no reference to Section 3's directive to the

President to conduct a review of the disaster relief legislation. The Senate Committee on Banking, Housing and Urban Affairs's report on H.R. 15692 does, however, explain its motivation for including this section. It reads:

Your Committee included in this legislation a provision requiring the President to conduct a thorough review of existing disaster relief legislation and to report to Congress not later than January 1, 1973, on specific legislative proposals for comprehensive revision of disaster relief legislation. It is the feeling of your Committee that previous attempts by Congress to establish a comprehensive disaster relief program have not been successful as is evidenced by the legislation before us today. The disaster relief act of 1970 was passed by Congress to establish a permanent ongoing program. However, as has happened so often in the past when extremely severe disasters strike, there is an immediate reaction to pass additional disaster relief legislation. Your Committee is concerned that this is not the proper and best intentioned approach, and by terminating this legislation at the end of this fiscal year, the Committee intends that a national disaster relief program could be established on a permanent basis that would improve the execution of the program by eliminating unnecessary administrative procedures and reducing the number of agencies involved in disaster relief programs and prevent the misuse of benefits.

Your Committee concludes that a permanent disaster relief program is of utmost importance. Disaster victims must be assured that they will receive the same type of assistance as is granted to other victims and only a comprehensive program can bring about that result.

Senate Report No. 92-1008, August 1, 1972, in U.S. Congressional and Administrative News, 92nd Congress, 2nd Session, pp. 2955-2956.

10. Congressional Record, August 4, 1972, pp. 26848-26858
11. Congressional Record, August 4, 1972, p. 26843.
12. Congressional Record, August 4, 1972, p. 26859.
13. Inasmuch as there is no way of predicting either the number or scope of disasters which will occur prospectively, no definitive cost figures can be projected for the 30-month

liberalization; however, SBA officials have carefully analyzed loans, heretofore made, which will be affected. Senate Report No. 92-1008, op. cit., p. 2957.

14. On the other hand, circumspection requires that one take a second look at certain political aspects of PL 92-385 which help explain how the law took the shape it did. The first of these is the recognition that 1972 was a presidential election year, and that at the time Agnes occurred, presidential politics was very much in the foreground. In view of the fact that PL 92-385 represented such an abrupt change of policy in raising forgiveness from \$2,500 to \$5,000 and reducing interest from over 5 percent to 1 percent, one may properly ask if the change was affected in part by political factors. There is almost no direct evidence of this in the written record; nor should one expect there to be. One's motives in helping his fellow men are not assumed to be suspect unless proven otherwise. The only reference to the part that politics played in passing PL 92-385 is found in the minority report of the Senate Committee (called "Supplemental Views on H.R. 15692") which began with the observation, "In view of the catastrophic floods which occurred in June, and the coming elections in November (emphasis added), we can understand the Committee's decision to increase substantially the benefits available under the disaster assistance program."

See Senate Report No. 92-1008, August 1, 1972, page 2958. This was signed by five Senators (Brock of Tennessee, Packwood of Oregon, Roth of Delaware, Taft of Ohio, and Cranston of California), the first four of whom were of the President's party.

15. It is interesting to note in this connection that Congressman Patton of Texas, the Chairman of the House Banking and Currency Committee who guided H.R. 15692 through that chamber, stated that in March 1972, the Administration had drafted legislation on SBA loan policy of a different sort, and not nearly as generous. Up to the time when Agnes occurred, the proposed legislation would have continued the Treasury rate for all except "hardship cases" for whom the interest rate would be 3 percent, as explained by SBA Administrator Kleppe when he appeared before the Committee. According to Patton, the Administration could get no member to introduce the bill, and that Kleppe "had been put under wraps" in asking to be excused from presenting written testimony. After Agnes, however, the position of the Administration changed to that indicated by the President's message. Congressional Record, June 29, 1972, p. 23396.

16. The view of the dissenting members of the Senate Committee on this subject is worth quoting here:

We feel that the effective date of January 1, 1971, causes severe problems. There is no equitable way to provide retroactive relief to some disaster victims and deny it to others. For example, why should we provide further assistance to victims of Hurricane Doria, which occurred one year ago, and not provide that same additional assistance to the victims of Texas' Hurricane Celia of 2 years ago? For that matter, why not cover the Cleveland windstorm of 1969, the Alaska earthquake of 1964, the Delaware hurricane of 1962, or the San Francisco earthquake of 1906? Proponents of retroactivity have failed to give any reasonable explanation for choosing any date prior to one which covers only the Agnes and Rapid City disasters that prompted the legislation, op. cit., p. 2959.

17. Congressional Record, August 4, 1972, p. 26848.
18. Op. Cit., pp. 2955-2956.

CHAPTER VII. PUBLIC LAW 93-288, THE DISASTER RELIEF ACT OF 1974

For almost twenty years, the first Federal Disaster Act of 1950 had remained in effect with relatively few changes. These were mainly add-ons by amendment, with the basic concepts of "emergency repairs and temporary replacement" continued intact. Public Law 91-79 was the first principal breach with the past, in which a number of important directives for individual assistance were added, and costs of 50 percent for permanent restoration were provided by the Federal Government. PL 91-79 was only temporary legislation and needed to be replaced by the end of 1970. The enactment of PL 91-606 followed. At the time of its passage, the prevailing opinion was that it would remain in effect for an extended period. The act had been developed after considerable study, and the benefits added by the Federal Government in both individual and public assistance were regarded by Congress as satisfactory and generous.

One must inquire, therefore, as to the reasons for enacting still another disaster relief act, the third in less than five years (PL 93-288 was approved on May 22, 1974). Was there indeed so much dissatisfaction with the working of PL 91-606 that it needed replacement? The question assumes that there is a normal causal relationship when a new congressional enactment replaces an existing statute - that Congress passes a new law only because the old one isn't working well. As this chapter will relate, that was not the case, and other circumstances account for the introduction of the bill, S. 3062, that eventually became PL 93-288.

As a matter of fact, as one reads through the 3,000 pages of testimony gathered in the six volumes of Senate Hearings¹ that preceded the introduction of S. 3062, the evidence is fairly clear that except for some specific criticisms, every one thought that PL 91-606 was a pretty good law. The complaints were directed mainly at its administration, and particularly in some areas of the Agnes disaster (e.g., Wilkes-Barre) where, given the level of preparedness, and the magnitude and scale of the disaster, administration of the law was put to its severest test. An examination of the pertinent parts of the new law will show that it adopted most of the sections of the old act without even a word change. For example, the hearings contain hundreds of pages discussing the functioning of the Federal Coordinating Officer (FCO) in these disasters (Camille, Rapid City, Wilkes-Barre and Elmira). There were many who testified as to the inadequacies

of the FCO's authority. Yet, when Congress came to rewriting the law, it restored the FCO section of PL 91-606 without a change of language. Congress reached the same decision on many other points, so that the new act of 1974 must be viewed as essentially PL 91-606 with some important additions. PL 91-606 was working well even as Congress contemplated its revision. It is a small wonder that one of OEP's seasoned Regional Directors commented in the hearings, "I wish you would get one (law) and stay with it for a while."²

The reasons for replacing PL 91-606 must, therefore, be traced to other sources, and part of this chapter will describe the roots of each section of the act.

To assist the reader in keeping in mind the sequence of events which led to enactment of PL 93-288, the following main events are recapitulated: The genealogy of PL 93-288 had two main sources: (1) S. 1840 which was the Administration's bill that was developed from the President's study directed by PL 92-385, and (2) S. 3062, the bill developed out of the Senate's Subcommittee on Disaster Relief, as introduced by its Chairman, Senator Quentin Burdick of North Dakota. The President had presented his proposed legislation which Congress ignored to the point of its not being reported out of committee. The main premises and tenets of S. 1840 ran counter to the trend of expanding Federal disaster assistance of its two recent acts of 1969 and 1970. Congress had no inclination to reverse the trend. As the Senate Subcommittee's hearings delved into its task (The Hearings were entitled, "To Investigate the Adequacy and Effectiveness of Federal Disaster Relief Legislation"), it was probably inevitable that the committee and its staff develop some new legislative proposals based on its findings. These were incorporated into Senator Burdick's S. 3062, a bill which was largely an amalgamation of S. 1840 and PL 91-606.³ Introduced on February 26, 1974, it was passed in revised form by the Senate on April 10. The House, on the other hand, as in the past, showed either disinterest or inattention to the Senate bill until the April 3-4 tornadoes struck a half-dozen States in the Midwest. Only then were both chambers spurred to take immediate action. As the history of the process had demonstrated before, new legislation issues from a timely confluence of a bill ready to be born with a disaster event of sufficient magnitude of interest to compel both houses of Congress to effect action. Both chambers then acted quickly, the Senate on May 9, the House on May 15. The President approved it on May 22.

I. The President's Study under PL 92-385

The introduction of new disaster relief legislation was fairly predictable since Section 3 of PL 92-385 mandated that the President "transmit to the Congress a report containing specific legislative proposals for the comprehensive revision of such legislation". The record is not clear as to the origin of the idea of the President conducting "a thorough review", but since PL 92-385 was sponsored by the Administration, it may be presumed that the proposal also started there. Whether or not the White House began its review with any a priori concepts or design of what such a "comprehensive revision" should be is not shown by the record. The review could have taken the form of specific proposals as amendments to PL 91-606, but instead, it resulted in the presentation of an entirely new law to replace it.

The President's bill S. 1840 was developed -- unlike any previous disaster relief act -- by a task force appointed by the President, chaired jointly by General George A. Lincoln, Director of OEP, and Frank C. Carlucci, Deputy Director of the Office of Management and Budget (OMB). Mr. Carlucci had served in the Agnes disaster at Wilkes-Barres as the President's personal representative, in effect as his Federal Coordinating Officer. The collection of data and the development of the task force study findings was under the direction of Robert Schnabel, Chief of OEP's newly created Division of Disaster Preparedness. Since PL 92-385 had directed a report by January 1, 1973, allowing only four months for its preparation, staff was recruited from OEP and other Federal agencies, with additional participation from officials of the American Red Cross, the Council of State Governments, the National Research Council, the National League of Cities, and other interested organizations.⁴

Before describing the study's findings, the events which influenced its thinking should be described since they shaped its conclusions. Certainly, one of the key factors was the impact of Tropical Storm Agnes: its tremendous cost, which one staff director estimated had reached two billion dollars for loans and direct outlays by January 1, 1973.⁵

Another factor that may have influenced the Administration's policy was the extent to which the Agnes disaster, particularly in Wilkes-Barre, involved the Federal Government in some of the daily tasks of local government. This may help to explain the references in the President's message to "local problems" and "local needs." Whether it wanted to or not, the Federal Government found itself performing functions of placing families in housing, managing the housing projects, garbage removal, etc. - which the Administration felt should not be its direct concern.

The cost aspect was disturbing: the Agnes disaster alone had already cost more than the entire Federal disaster relief program since it was established in 1950. As time passed after the June 1972 flooding, public compassion for its victims had cooled, replaced by other concerns, such as costs and the vexations in providing assistance. There's little doubt that these concerns helped color the Administration's perception of the problem, and in consequence the solutions offered.

The findings of the task force on the subjects of disaster preparedness and mitigation were also greatly influenced by another study done under Schnabel's direction during the previous year. In Chapter V, there was mentioned the OEP report to Congress, as directed by Section 203(h) of PL 91-606, on how to "prevent or minimize losses of publicly or privately owned property and personal injuries or deaths..." which could result from natural disasters. The report in the form of a three volume "Disaster Preparedness" study was the most comprehensive analysis of natural disasters made up to this time.⁶ It analyzed the effects of each type of disaster event, and it focussed on how these might be reduced or prevented. The work of the previous year no doubt left its mark on the thinking of the staff, and shaped the bill that it helped develop. For the first time, a disaster relief act gave emphasis to a program that combined elements of disaster response, preparedness, prevention, and mitigation.

The charge upon the study's task force as stated in the statute was to: (1) standardize the benefits to achieve fairness and consistency, (2) improve the program's execution, and (3) prevent misuse of benefits. The Working Group conducting the study proceeded to make a "Comprehensive Review" involving just about every aspect of the disaster relief program. The term "comprehensive" exactly describes the scope of the review which included such subjects as vulner-

ability analysis, prediction and warning, disaster legislation, insurance, psychological impact of disasters, etc. From the files of the Working Group, in its early phase of collecting information, one must conclude that its viewpoint and motivations were strictly objective and non-political. It was later when it's task escalated to determining policies and options that higher echelons in OMB and the White House Domestic Council appear to have influenced the final decisions in the report.

It would be impossible, in this history, even were it necessary, to try to summarize all the findings and conclusions of the task force study. Several aspects should be mentioned, however, as being directly relevant to understanding the sources of S. 1840. One of them is the evaluation of the use of insurance as an alternative to the Federal Government's indemnification of disaster losses via forgiveness and other kinds of grants or loans. A separate study was a "Benefit-Cost Analysis of Loans and Insurance for Disaster Relief," by Professor Howard Kunreuther of the University of Pennsylvania, which concluded in favor of the policy of insurance. Insurance was to become one of the key elements in the Administration's bill.

A significant portion of the task force's efforts was expended in analyzing the weaknesses in disaster relief administration so as to improve the program's execution, as directed by PL 92-385. A separate staff was recruited from OEP, the Council of State Governments, and the National League of Cities, and these officials were sent into the field to interview Federal, State and local officials on six selected recent major disasters (San Fernando; Norfolk, Nebraska flood; Buffalo Creek; Rapid City; the Agnes floods in New York, Pennsylvania, Maryland, Virginia; and the Arizona flood). A total of 321 interviews were accomplished - about a third with officials from each level of government - which provided insights as to how the program was perceived as working. Most of the criticisms were directed at the administration of the law rather than the law itself, and particularly in the management in such areas as Wilkes-Barre where the problems seemed so overwhelming. Many of the complaints were centered on such management problems as too frequent and rapid rotation of Federal officials, lack of full authority by the FCO, and constant, confusing and conflicting policies, etc. Since these interviews were to

furnish the Administration with findings on how to design its revised legislative proposals, the full text of the pertinent conclusions are quoted below:

From Federal Officials:

In the temporary housing program, the predominant comment, with agreement from many State and local officials, was that the State and local jurisdictions should leave the whole program to the Federal Government. This was supported by OEP, HUD, and State and local officials in the Wilkes-Barre and Elmira-Corning areas.

From State Officials:

In the public assistance area... the 50 percent reimbursement rule for Category G work (public facilities damaged while in process of construction) is not supportable and ought to be changed to 100 percent. Beyond that, there is considerable agreement that Public Law 91-606 is a good law.

From Local Officials:

As to changes in the law... in all areas, local officials noted that the Community Disaster Grant (Section 241) was inadequate or utterly unworkable...

In all areas, local leaders felt that the Federal Government fails to understand the financial constraints under which they must operate. When extraordinary expenses are incurred, the community must borrow unless immediate State or Federal aid is forthcoming. In some States, aid to communities is prevented by statutory and constitutional provisions preventing the transfer of funds to local government... that many communities are capable of handling most emergencies... often Federal officials move into communities with the preconceived notion that local officials are utterly incompetent. Local officials can and should play a larger role in the disaster recovery effort...

In the temporary housing program, there is agreement with State officials that local and State government should be taken out of the program administratively and financially.

These views, condensed from over three hundred interviews, show rather conclusively that those officials felt that the present law (PL 91-606) was satisfactory, and that the defects were in its administration rather than in the act itself.

It appears that when the Administration came to formulate its own legislative proposals, the findings of its task force were largely ignored or dismissed as irrelevant.

Another aspect should be mentioned which refers to the conclusions quoted above from local officials: that the "financial constraints under which they operate," and the fact that "in some States, State aid is prevented by statutory or constitutional provisions preventing the transfer of funds to local governments...." That many or most State governments had little or no financial capability to assume any unbudgeted major share of financial costs for disaster assistance was amply shown in a study financed by OEP and prepared by the Council of State Governments only two years previously. The study, "State Disaster Relief Administration"⁸ indicated fairly conclusively that almost no State had at this time established an emergency fund sufficient to assume the responsibilities that would await them under the bill that the Administration was to propose. Yet, a perusal of the task force's files makes no reference to the study - as though it never existed.

A review of the files of the task force in chronological sequence discloses that in the early stages of collecting its data, the study hewed closely to objectivity in obtaining and evaluating its data. But, as it moved forward to preparing options for policy decision, the objective approach was made to accommodate to White House policy.⁹ The files at hand are too incomplete to determine just when the outlines of S. 1840 began to be visible. But one of the memoranda issued by the White House, dated November 29, indicated quite clearly the guidelines of what the Administration expected in the study's conclusions.¹⁰ Under the heading of "General Policy Emphasis," nine objectives were listed, among them such matters as "...making sure the taxpayer gets his money's worth," "improve management and management systems," "increase authority and responsibility delegated to executive departments and agencies" and "eliminate change for the sake of change". The crucial points of the new policy emphases were directed to the following:

Reduce Federal involvement in dealing with State and local problems which require governmental responsiveness at a local level.

Increase role of State and local governments in solving their local problems.

Increase planning and preparation by State, county and local governments stimulated by Federal assistance.

Increase private sector responsiveness and enhance the ability and willingness of the marketplace to meet local needs.

Although Section 3 of PL 92-385 mandated that the President present the findings of his review to the Congress not later than January 1, 1973," the Study was not completed by that time. Instead, on that date, it offered to Congress what it had accomplished in the form of a report, "The Federal Disaster Program: A Comprehensive Review," as well as a paper describing three options, awaiting the Administration's determination of which options would be selected and how they would be combined into a finished bill. Two months later, on March 9, the final report was finished, including a proposed "Disaster Preparedness and Assistance Act of 1973" and an accompanying policy statement paper explaining and supporting it. It was this paper "New Approaches to Federal Disaster Preparedness and Assistance"¹¹ that President Nixon on May 14 forwarded to Congress with the proposed act.

II. The President's Bill S. 1840

The President's bill, S. 1840¹² was elaborately explained and defended in the 16-page "New Approaches" message that accompanied it, -- (the only time that a disaster relief act had been presented by a President). Some of the key issues underlying the proposed act were "how to reverse the trend of an expanding Federal role in the management of disaster relief operations through greater reliance on States, localities and private relief organizations," and how to reduce reliance on Federal funding to cover natural disaster losses. The bill represented a "fundamental restructuring" of the disaster relief program, and in one respect a reversal of a trend of 23 years. The message asked that Congress consider that while Federal assistance was legally only "supplementary", it had become "paramount" and "virtually the sole provider of recovery assistance in case of a major disaster". The financial contributions of the States and local governments were paltry by comparison -- "an expression of intent but less operative in practice." The benefits had become "so generous that individuals, businesses and communities had little incentive to take initiatives to reduce personal or local hazards". Purchase of insurance was substituted to become

the "main mechanism for indemnification of losses," because it was "a more efficient and equitable means of loss compensation".

Further, "greater preparedness is emphasized and encouraged for government at all levels...." After presenting each of the principal ideas in the bill, the President's message concluded:

In some respects, the proposed legislation will reduce the level of Federal benefits to local governments and to the private sector. But this need not mean an actual lessening in disaster assistance. That will hinge largely on the willingness and the capabilities of the individual States to meet their responsibilities...

Federal grants to the States will provide more latitude for State determination of priorities and the most effective use of supplementary Federal funds - decision-making that the State is better able to do for itself - and will eliminate much of the red tape, so costly in time and money, involved in complying with myriad Federal forms, regulations and procedures.

The proposals are not designed to provide less aid overall but to ensure that the assistance is provided by the most effective and efficient means. This can produce economies of scale and at the same time mean more help where most needed. The requirement for subsequent insurance may well be a firm but effective way to share the load of loss indemnification and is fully in accord with the American principle of self-help before turning to government.¹³

Before analyzing S. 1840, it is advisable to summarize its main concepts to understand it in a total context.

1. The most important single change was the new role that was to be assumed by the State (and to a lesser degree by local governments) in providing disaster assistance. Whereas, in the past, the States had been largely passive recipients of aid in disaster operations managed by the Federal Government, their new role was to manage the disaster operations and to distribute the Federal funds passed on to them. Where the Federal Government was presently funding virtually all disaster assistance by its 100 percent reimbursement for public facility repair and replacement and low interest loans, funding was now to be reduced to a 75 percent grant on a formula basis.

2. The purchase of insurance was made mandatory as an integral part of Federal disaster assistance. It was argued that "insurance is a more efficient and equitable means of loss compensation" and "is less costly to the individual and to the Federal Government". Since most property losses were caused by flood damage, "the National Flood Insurance Program should be strengthened."
3. Mitigation and reduction of disaster hazards, heretofore relatively overlooked in prior legislation, were now given a new emphasis. "Disaster preparedness" was thought deserving of a separate title in the act, (Title VII "Disaster Preparedness Assistance") to provide for the development of plans, programs, and capabilities for disaster preparedness" which were to include "hazard reduction, avoidance and mitigation". For the first time in the legislation, there was included (in Title VIII, Miscellaneous Provisions), a procedure which required the recipient of a disaster loan or grant to take into account the natural hazards in such areas and to take "appropriate action...to mitigate such hazards, including safe land-use and construction practices". The last two Federal acts, PL 91-79 and PL 91-606, had provided matched funding for preparedness in the form of State disaster plans but both had, thus far, proven ineffectual.
4. The new bill proposed a number of changes in the act, among them: a more clearly defined category of emergency assistance separate from major disaster assistance; a standardization of loan assistance tied closely to the required purchase of insurance, under far less liberal terms of availability and interest rates, now delegated to the President with wide discretionary authority for its exercise; a liberalization of Federal funding to include repair of public recreational facilities heretofore excluded; and a program of "grants for needy families".

Having reviewed the main outlines of S. 1840, its separate parts may now be examined. The bill, then entitled the "Disaster Preparedness and Assistance Act of 1973", was comprised of seven titles, each of which will be summarized in sequence.

Title I, Findings, Declarations and Definitions, was changed from that in PL 91-606 to emphasize some of the new concepts: that Federal assistance was supplementary only, that the "scope of existing disaster programs" was being revised to

"make them more compatible with and responsive to local needs"; to "encourage the development of comprehensive disaster assistance capabilities"; to "encourage" self-protection "by obtaining insurance coverage to supplement or replace governmental assistance"; and "to encourage hazard mitigation measures." The section on Definitions was basically unchanged.

Title II, Disaster Assistance Administration, included most of the sections that related to procedures, assistance by Federal agencies, the appointment and roles of the coordinating officers, and administrative matters such as nondiscrimination, duplication of benefits, criminal and civil penalties, and insurance.

One of the most important sections was Section 211 made the purchase of insurance a prerequisite for obtaining assistance for property repair or replacement.

Also, the provision of insurance applied to Sections 401, 402, 501, and 602 of the act as to deny assistance for any property for which such assistance had previously been received unless insurance had been obtained and maintained. The insurance requirement applied equally to disaster loans (excepting community disaster loans), grants to needy families, and grants to States for public facilities repair or replacement.

Title II also included a Section 213, Criminal and Civil Penalties, which introduced a criminal penalty of a fine of up to \$10,000 and no more than a year in prison for "willfully violating any order or regulation" and increased the civil penalty by a fine of up to \$5,000 for each violation.

Title III, Emergency Assistance, provided a new clearly defined category of assistance separate from that of declared major disasters. Section 301 of S. 1840 provided that if the President determines upon a request from the Governor that a major disaster is imminent or (emphasis added) "that emergency services are necessary to save lives and protect the public health and safety" he may use all Federal agencies and instrumentalities and resources "as he deems necessary to avert or lessen the effects of such disaster or danger." Under this title the President could direct Federal agencies to provide such assistance, with emergency work not to extend normally beyond 30 days without his waiver of the limitation.

Section 303, Use and Coordination of Relief or Disaster Assistance Organizations, is largely a copy of the similar Section 207

in PL 91-606, but without naming any of the relief organizations.

Title IV, Disaster Loans, is the longest single part of S. 1840 and treats the subject comprehensively. Whereas the previous disaster relief acts had issued directives to the Federal loan agencies, the SBA and the FmHA, Title IV made blanket delegations to the President to exercise full discretionary authority under the act. Title IV included two sections similar to those in PL 91-606.

Section 402, Loans to Major Sources of Employment, used language similar to the comparable Section 237 of PL 91-606, but which would operate within the terms set by Title IV. The other section was Section 403, Community Disaster Loans, which would have replaced Section 241 of PL 91-606, Community Disaster Grants. Under its terms, the President was authorized to make disaster loans upon application of a local government in need "of financial assistance in order to perform its governmental functions." The amount of the loan "shall be based on need, and shall not exceed 10 per centum of the annual operating budget of that local government." The interest rates applying to community loans would be those set forth by the other parts of the title.

In formulating the terms and conditions of the Federal disaster loan policy, the White House had determined to make a clean break with the previous Congressional programs. In the first place, no loans were to be made for the repair or replacement of property damaged or lost "to the extent it is not covered by insurance," and there was compliance with Section 211 of the act. All loans "notwithstanding the provisions of any other law" must have met terms prescribed by the President. No loans or guarantees were to be made "unless the President finds that credit is not otherwise available on reasonable terms and conditions, and that there is reasonable assurance of payment." Loan maturities could not exceed thirty years during which complete amortization must be provided, except that the President could extend the maturity not beyond five years if he determined "such action is necessary as the result of a major disaster." Loan interest rates would be guided by the current Treasury rate based on the current market yield of outstanding marketable U.S. obligations. In another section of S. 1840, Section 805, it was provided that Section 2 of PL 92-385 would be continued, whereby loans would be made directly or in cooperation with banks and other lending institutions through agreements for their participation in making the loans. The Government would guarantee the loans up to 90 percent, which it would

pay to the holder if the borrower defaulted. "The approval of the President shall be required of the interest rate, timing and other terms and conditions of the financing of guaranteed obligations" except that he "may waive this requirement...when he determine that such financing does not have a significant impact on the market for Government and government-guaranteed securities."

"The total amount of debt service payments contracted to be made under this Act shall not exceed \$100,000.000. A "revolving fund" was to be created as a separate fund in the Treasury, in which the President could issue notes to the Secretary of the Treasury if the moneys available in the fund are insufficient to discharge his responsibilities under the act. The other parts of the title relate to such sundry matters as the President's management of the fund - charging for and collection of fees to cover administrative costs and losses on guaranteed loans, recovery of funds from the borrower, and sale and disposal of acquired property.

Title V, Disaster Grants for Needy Families, would have been an innovation probably devised as a replacement of the \$2,500 loan forgiveness in PL 91-606 and of the \$5,000 loan forgiveness of PL 92-385, since repealed. Its meaning should be read in connection with Title VI, Grants to States, since the two titles are inseparable. Section 501 provided authority for the President to make grants in major disasters "for the purpose of assisting the State in indemnifying the uninsured losses of needy families, and thereafter, to aid such families in meeting such other extraordinary disaster-related expenses." Section 601 of Title VI further described the purpose of the grant: "provision of essential human needs and services, including but not limited to food, communications, water, clothing, utility services, and public transportation. The amount of the grant was to be determined by the President based on information supplied by the State Governor as to the number of low-income families affected by the disaster, but in no case was an individual grant to be more than \$3,000 - the President having authority to define the meaning of low-income, and no family to receive a grant in excess of \$4,000. The State could be provided an initial advance not over 25 percent of the estimated funds required; and Section 602 further provided a cost of administration grant of not more than 3 percent of the total grant. Title V also stipulated certain restrictions on the grant's use: compliance with the act's insurance requirements; the grant could not be used for business purposes or for replacement of real property in excess of an actual uninsured loss. The Governor or his designated representative was delegated "complete discretion" in determining eligibility requirements or the amount of the individual grants.

It was in Title VI, Grants to the States, that the quintessence of S. 1840 was presented - an abrupt reversal of the trend of the past decades assistance. The new formula was to be 75 percent of the estimated cost of disaster relief across the board - for needy family grants, for public facilities repair and/or replacement, for unemployment benefits, and for provision of temporary housing. The State would bear the other 25 percent and would receive 3 percent additional for its costs of administration.

While the percentage of cost to the Federal Government was decreased by 25 percent, Title VI did, however, add to the scope of what was included in PL 91-606. It would no longer exclude repairs or replacement of recreational facilities, and it added to the number of types of private nonprofit facilities eligible for assistance.¹⁴ The enumerated list included educational, utility, emergency, medical and custodial care facilities including those for the aged and disabled, and also facilities of Indian reservations.

Title VI included provisions for grants for two disaster relief functions - unemployment assistance and temporary housing. In Section 601 (c), the President was authorized to make grants "as he deems appropriate" to any individual unemployed as a result of a major disaster, under which the maximum amounts and duration of the grants would be limited to the unemployment compensation program of the State in which the disaster occurred. As for temporary housing and emergency shelter, the President was similarly granted a wide discretion in the following language: "The amount of such grants shall be determined by the President on the basis of the number of families requiring such housing but shall not exceed a fixed amount per eligible individual or family, and shall be in accordance with criteria to be established in regulations promulgated by the President. Such housing may include payment to occupants for relocation costs."¹⁵

Section 601 goes on to say that the amount of Federal funds "shall be based upon 75 per centum of the estimated cost of relief sustained as a result of the major disaster. In other words, where the Federal Government was now paying 100 percent of the cost of public facility repair and/or replacement, its grants under the new act would be no more than 75 percent of that amount, plus not more than 3 percent additional for the costs of administration. An initial advance of not

more than 25 percent of the estimated funds required could be provided. For all grants, whether for public or private facilities, the insurance requirement would apply: "No grant shall be disbursed unless the Governor or his designated representative has assured compliance with the insurance requirements of Section 211."

In Section 602, there is another sentence that would alter the character of Federal disaster assistance: "The Governor or his designated representative shall be responsible for administering the grant program authorized by this title. In this single sentence, it was now being proposed that the management and control of the grant system was being shifted from the Federal to State governments. Although subsection (c) provided that "the President shall promulgate regulations that shall include criteria, standards and procedures for administration of the grants," the act left the administration of the new grant system almost entirely within the Governor's discretion.

Only with respect to grants to the private nonprofit facilities and the Indian reservations did S. 1840 limit or control the Governor's use of the Federal funds. In those cases, the money must be "utilized specifically for those facilities." For all other instances, it lay within the discretion of the Governor how the money was to be used.

Disaster Preparedness Assistance was regarded by its designers as of sufficient importance to warrant having a separate title (Title VII) in the act. While seemingly a continuation of the State planning grants of PL 91-79 and PL 91-606, it was couched in language and concepts that suggest that the Federal Government was to embark on an enterprise different in content and scale from what the law had provided previously. The title contained three main provisions: In Section 702, Disaster Warning, was repeated the provision in the previous acts giving the President authority to utilize and make available the facilities of the civil defense communications system to provide warnings to the civilian population. A new ingredient was added authorizing him further to enter into agreements for the same purpose with officers and agents of commercial communications organizations who volunteer the use of their systems to provide such warnings.

In Section 701(c), the Act authorized grants to States, upon their application, "not to exceed \$250,000 for the development of plans, programs and capabilities for disaster preparedness." The previous acts had also made available grants of up to that amount but on a 50 percent matching basis, whereas this grant was to be paid for entirely by the

Federal Government, and made available to the States for a period of a year from the date of enactment. To obtain such a grant, the State was to submit to the President "a State plan... which shall set forth a comprehensive and detailed State program for preparing provisions for emergency and permanent assistance to individuals, business and local governments....".

It was in the first part of Section 701 that there was contained the statement that suggests the broad outline of what the designers of this section intended. Section 701 (a) begins by authorizing the President "to establish a program of disaster preparedness." Such a program would utilize the "services of all appropriate agencies" and include the following components: (1) preparation of disaster preparedness plans for mitigation, warning, emergency operations, rehabilitation and recovery; (2) training and exercises; (3) post-disaster critiques and evaluations; (4) annual review of programs; (5) coordination of Federal, State and local preparedness programs; (6) application of science and technology; (7) research; (8) assistance in updating disaster legislation. Part (b) of the same section described the program further:

The President is authorized to provide technical assistance to the States in developing comprehensive plans and practicable programs for preparation against disasters, including hazard reduction, avoidance and mitigation; for assistance to individuals, businesses and State and local governments following such disasters; and for recovery of damaged or destroyed public and private facilities.

Title VIII, Miscellaneous Provisions, the last title of 3, 1840, in addition to providing for the repeal of the long list of Federal statutes that this act was to replace, included a number of important substantive provisions. One of these was in Section 801, Minimum Standards for Public and Private Structures. A similar section having the same name was included in PL 91-606 - Section 843 which provided that no loan or grant was to be made for the repair or replacement of any residential structure "unless such structure will be... in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable building codes and specifications. Section 801 repeated the above and added the following language:

...and shall furnish such evidence of compliance with this section as may be required by regulation. As further condition of any loan or grant made under the provisions of this Act, the State or local

government shall agree that the natural hazards in the areas in which the proceeds of the grants or loans are to be used shall be evaluated and appropriate action shall be taken to mitigate such hazards, including safe land-use and construction practices, in accordance with standards prescribed by the President, and the State shall furnish such evidence of compliance with this section as may be required by regulation."

Section 802, Federal Facilities, repeated the substance of Section 251 of PL 91-606 which provided authorization for the repair or replacement of any Federal facility damaged or destroyed by a major disaster and the funding procedures for that purpose. But in addition, it imposed upon Federal agencies the same obligation applying to State and local governments in Section 801, using the same language, to evaluate the natural hazards to which such facilities are exposed and to take appropriate action to mitigate them.

Sections 803 and 804 were named Timber Sale Contracts and Relocation Assistance. These repeated the contents of the same sections in PL 91-696, Sections 242 and 254.

Section 805, Repeal of Existing Law and Technical Amendments, listed the various laws that were to be now replaced by this new act.

Section 807, Effective Date, provided that the act was not to take effect immediately but in 120 days from the date of enactment, except as otherwise indicated.

The postponement of the effective date was to provide the States with additional time to make arrangements to accept the act's new responsibilities.

Although S. 1840 failed to get consideration in Congress as a whole bill, a fair appraisal indicates that it presented a number of new ideas and practices that Congress would deem worth adopting, but in modified form.

1. One of these was calling attention to the fact that as Congress expended the Federal role in disaster assistance, the State role was diminishing to the point of becoming passive recipients and not participating in self-help to the degree they were capable.
2. It included as a requirement the purchase of insurance by both the individual and the State and local governments as an improved and more efficient means of loss indemnification.

3. It included a clearly separate category of emergency assistance distinct from that under a major disaster declaration. This provided greater flexibility of disaster response under the President's authority.
4. It recognized that the quarter million dollar State preparedness matching grants under the previous two laws had been ineffectual, and sought to correct this by providing 100 percent Federal funding as part of a comprehensive disaster preparedness program to be established.
5. It gave recognition for the first time in the disaster relief legislation to the need of including procedures for disaster mitigation. It required States, the local governments, and Federal agencies to undertake an evaluation of natural hazards and to take appropriate action to mitigate such hazards through land use and construction practices.
6. It introduced a system of individual grants as a replacement for the previous system of loan forgiveness. The individual grants would be based on need rather than on loss and would be administered by the States, which would be responsible for one-fourth of the cost.
7. It extended assistance to recreational facilities and the excluded private nonprofit utilities and custodial care facilities for the aged and disabled.

Little is known about the circumstances by which Congress gave S. 1340 a short shrift, but much can be surmised from analysing its provisions and Congress's actions. Some information is furnished by the Senate hearings and the floor debates, but only on some phases of the bill. It seems fairly sure that Congress felt that S. 1340 was too abrupt and too complete a change from the legislative trend of the past quarter century. S. 1340 repudiated the basic tenets of PL 91-606 which was regarded generally as a good law. A probable factor may have been that the Administration had failed to prepare Congress for a more favorable reception of its bill by gradually building up some support for it. The analysis made by the task force study showed conclusively that the officials - Federal, State, and local - felt that the disaster assistance functions should continue to be handled by the Federal - not the State governments. The

testimony presented in the hearings raised questions concerning the States' capability to assume the management role required under S. 1840, as well as their financial capacity to provide immediate funding of their 25 percent share. Objections were raised to particular provisions in the bill such as the insurance requirement that applied to both government entities and to individuals, and to the Governor's authority to distribute the Federal contributions at his discretion without having to turn over such funds to the community whose facilities were damaged. S. 1840 delegated in almost all its sections blanket authority to the President to determine what the law would mean when put into effect. The short life of S. 1840 demonstrated that Congress was not ready to give the President that authority.

III. The Legislative Development of S. 3062

Since PL 93-288 was an amalgam of two bills, S. 1840 and S. 3062, our purpose in this section will be to trace its legislative antecedents in S. 3062, and to follow its development from its introduction through passage.

S. 3062 evolved as the result of a series of hearings conducted by the Subcommittee on Disaster Relief of the Senate Committee on Public Works. The Subcommittee¹⁶ was chaired by Senator Quentin Burdick of North Dakota who (with the ranking minority member, Senator Pete Domenici of New Mexico) assumed the dominant leadership role in reviewing Federal disaster assistance that was to lead to presenting the new bill. Even before the President's bill was presented, Senator Burdick had arranged a series of public hearings in four cities recently affected by declared major disasters. The times and places of the hearings were: March 24 in Biloxi, Miss.; March 30-31 in Rapid City, S.D.; May 11-12 in WilkesBarre, Pa.; June 1-3 in Elmira, N. Y. Later in the year, on September 11-13, Senator Burdick conducted three days of hearings in Washington, D. C. which centered on S. 1840.

As Senator Burdick opened the first of the hearings at Biloxi, he announced its purpose to "review the adequacy of Federal disaster relief legislation and the effectiveness of its administration":

"...its seems an opportune time for this subcommittee to examine disaster assistance laws and to review the quality of their administration. Sufficient time

has elapsed and enough experience has been gained since the enactment of the comprehensive Disaster Relief Act of 1970 to permit an evaluation of whether Federal efforts are helping to meet meaningfully the needs of those who suffer severe losses in major disasters."¹⁷

Between March 24 and September 13, the subcommittee had accomplished its objective of trying to ascertain the views of all varieties of persons who had been involved in the recent disasters - officials of government, private citizens, relief and other organizations. More than 300 witnesses testified and about 90 more submitted statements into over 3,000 pages of the hearings' record. A reader of the hearings cannot help but be impressed with the willingness of Senators Burdick and Domenici and their colleagues to solicit views and complaints in order to get a cross section of opinion.¹⁸ While some of the testimony was on the subject of the legislation, most had to do with the administration of the laws. Senator Domenici later recapitulated the subcommittee's findings in saying, "...there was general agreement expressed throughout the hearings that the authorities and procedures established in Public Law 91-506 are adequate and responsive as far as they go... there is agreement that we have a basically sound disaster relief program."¹⁹

It was not until later in 1973, after the Administration had introduced S. 1840, that the subcommittee gave its attention to considering the merits of that bill. Another hearing was held for this purpose on September 11-13 in Washington where views were solicited from higher level officials who had been actively involved in disaster administration. It would be difficult to try to summarize the many views presented except to say that in general, S. 1840 was not well received. It was ardently defended by Administration officials, supported in principle by State officials but not on specifics as it affected them, and just as vigorously condemned by others. Spokesmen for the National Governors Conference and the National Legislative Conference commended its objectives in principle, but were opposed to the 75-25 percent formula and proposed a 90-10 split instead. One of the main questions the subcommittee sought an answer for was, "Did the States have the capability to handle the S. 1840 responsibilities?" It is rather curious that a number of State witnesses in answering this question offered the view

that while their own State could handle the S. 1840 tasks, they doubted that most other States could do it!

Since it is impracticable to adequately summarize all the views presented on S. 1840, an alternative is to present the views of the two spokesmen who most ably defended it and who most effectively challenged it, these being the newly appointed Administrator of the recently created Federal Disaster Assistance Administration, Thomas E. Dunne, and (by coincidence, his successor as FDAA's Administrator) William H. Wilcox, Pennsylvania's Secretary of Community Affairs who had been actively involved in the Agnes disaster.

Mr. Dunne focussed his defense of S. 1840²⁰ primarily on two central aspects of the program, viz. on the proper role of the Federal Government in what is legally "supplemental" assistance, and whether the States had the capability to perform the functions required by the bill. In his view, Federal assistance had gone too far, to the point in which disaster aid was now almost entirely Federal, both in involvement and in defraying the costs. The States had merely to qualify for a presidentially declared disaster after which they could become largely passive recipients. Under the present arrangements with the States sharing in little of the costs, they lacked incentive for making the program more efficient and economical. Dunne did not question that there would be problems were the States to assume their role under S. 1840, and that the capability was lacking among many at the present time. There were two solutions for that: First, the \$250,000 planning grant with 100 percent Federal funding would enable each State to develop the necessary plans and organization for the management of the assistance. Secondly, FDAA and the other Federal agencies would provide technical assistance where and when it was needed in both the planning effort and in managing under a declared disaster. He maintained that there was a tremendous amount of resources and talents in the State governments.

Dunne also expressed the view that the big disasters studied by the Senate subcommittee hearings - Camille, Rapid City, Wilkes-Barre and Elmira - were not typical of declared disasters. Most declared disasters were of a much smaller range and dimension - mainly storm and river floods and tornadoes - which were within the State's capability to cope. It was unfair to judge State capabilities from the experience of disasters of the Camille and Agnes magnitude. He felt confident

that the States would be able to handle their role under S. 1840 when given the Federal Government's technical assistance and the planning grant money. He assured the subcommittee of FDAA's cooperation and help to make that possible.

The most effective witness in expressing opposition to S. 1840 was William H. Wilcox of Pennsylvania, its Secretary of Community Affairs. He did not question that PL 91-606 could be improved, but he held that S. 1840 was a step backwards by which the Federal Government was defaulting on its responsibilities. He questioned the Administration's view that the States were not picking up their share of the costs, citing the fact that his State had incurred a direct bonded indebtedness of over \$450 millions to help its communities and citizens. Some of Mr. Wilcox's views are reflected in the following statements:

"To summarize in a simple sentence, our comparative study shows that the Administration's purported new approach to disaster assistance is to give the States the money or at least a portion of the money needed, and run."²¹

"The existing legislation requires the State to provide and develop the housing sites. I think that is probably a pretty reasonable requirement because we know where the vacant land is... But that is a more appropriate responsibility for the State government to have, than to have thrown at it, big State, little State, the blanket basis with the President having the discretion to decide how much and what proportion, as I read the legislation, how much funding he will give, to have the whole housing function, lock, stock and barrel, tossed at the State at the very moment when it is facing an enormous amount of other problems."²²

Meanwhile, in the half-year interlude that had followed the September 1973 hearings, the subcommittee and its staff had been busy formulating and drafting a new bill. On February 26, 1974, Senator Burdick introduced S. 3062 with co-sponsors. He preceded his introduction with a comprehensive statement describing the Federal disaster relief program from its beginning, with tables of figures showing the Government's outlays for each program through two decades.²³

Before describing what was in his bill, he proceeded to explain why he regarded the Administration's bill deficient, although parts of S. 3062 were liberally extracted from it. He regarded as "questionable" its "shift to the States almost complete responsibility for administering federally funded disaster relief activities." The "most commonly criticized section of the bill" was its reduction "by 25 percent... of the estimated cost" of repairing or replacing eligible facilities. He was opposed equally to the omission in S. 1840 of many of the existing benefits in PL 91-606, and stated, "It is difficult to understand why these provisions were not considered of sufficient value to be incorporated in S. 1840."²⁴

Among the benefits now provided for disaster victims by PL 91-606 which are not included in the administration bill are those authorizing occupancy of temporary housing without charge for as long as one year, payments on mortgage or rental obligations for those threatened with eviction from their residences, and distribution of free food coupons and agricultural commodities. Sections providing for emergency communications, public transportation systems, indemnity for debris removal, and fire suppression grants are also dropped, although some of these same goals might be achieved under other authority.²⁵

Senator Burdick conceded that some of these functions deleted in S. 1840 could be "achieved under other authority" but he preferred that they be retained in the enactment. He concluded, "After careful consideration of all available evidence, I am convinced that the disaster assistance role of the Federal government should not be abruptly or substantially diminished."

In format, S. 3062 is identical to PL 93-288, including its six titles, and there is almost no change in the numbering of the act's sections. Title I provided for the Findings, Declarations and Definitions; Title II incorporated S. 1840's program for Disaster Preparedness Assistance; Title III, Disaster Assistance Administration (made up of 18 sections), consolidated almost all the provisions for directive/administrative implementation. Title IV, Disaster Assistance Programs, contained 18 sections describing the substantive programs of individual and public assistance combined with some directive implementation by Federal agencies. Title V, Economic Recovery for Disaster Areas, was entirely new - a program for long-range recovery in the form of an amendment to the Public Works and Economic Development Act of 1965; Title VI, Miscellaneous, included those provisions customary

under this title, viz., repeal of previous statutes, effective date, etc.

S. 3062 can be best understood if one views it as the previous act, PL 91-606, with certain new provisions from S. 1840 grafted on it. About 30 of the 50 sections in PL 91-606 were included in S. 3062 without change, and others with slight modifications.

The most important changes proposed in S. 3062 are:

1. In Section 102, Definitions, a number of disaster hazards were added for which a major disaster may be declared: volcanic eruption, landslide, tsunami, mudslide, snowstorm, and explosion.²⁶
2. Section 201 which provided for establishing a Federal and State program of disaster preparedness with a \$250,000 grant to the States was a transfer, almost word for word, of Section 701 of S. 1840. In neither S. 1840 nor S. 3062 was there a provision for the smaller improvement grant.
3. In Sections 102, Definitions, and in Section 305, Emergency Assistance, the language suggests the intent to establish a level of disaster assistance separate from that in a major disaster declaration and similar to that in Section 301 of S. 1840. The result in S. 3062 was both less than successful and also confusing. Instead of a new separate category of "emergency assistance" as in S. 1840, it referred to both categories in the definition as "disaster" - a lesser "disaster" as that "which requires emergency assistance" and a "major disaster" as that "determined by the President to be of sufficient severity and magnitude to warrant assistance above and beyond emergency services provided for lesser disasters." As defined, it left no authority for the President to take action prior to the event.
4. Section 314, Insurance, adopted the concepts and language of S. 1840 in requiring all applicants - individuals and public entities - for assistance under the act to obtain and maintain insurance. However, in S. 3062, States and local governments could elect to become self-insurers.
5. Section 317, Criminal and Civil Penalties, was a copy of Section 213 in S. 1840.
6. Section 318, Emergency Wage, Rent and Price Controls, was a new concept, in which the President, at the request of a Governor, could impose wage, rent, and price controls to pre-disaster levels in the disaster affected area when he determined it to be necessary.

7. Section 402, Repair and Restoration of Damaged Facilities, expanded the provisions for public facility repair in Section 252 of PL 91-606. In both, the Federal contribution was to "not exceed 100 per centum of the net cost of" repair or reconstruction, but the bill would include, as proposed by S. 1840, "private nonprofit educational, utility, medical, and custodial care facilities, including those for the aged and disabled and facilities on Indian reservations as defined by the President." Public facilities eligible for repair would also include "those used for educational and recreational purposes." A new provision was added in which States and local governments could elect to receive a contribution based on 90 percent of the total estimated cost of restoring their damaged facilities to be expended under their own option on other public facilities in the disaster-affected area.
8. Section 405, Restoration of Private Homes to Habitable Condition, was added as a separate section in addition to Section 404 which provided for temporary housing assistance identical to the housing provisions in PL 91-606. The so-called mini-repair housing program of Section 405 had been improvised in the Agnes disaster as an alternative temporary housing program to return homes to a habitable condition. It limited the unit cost to \$2,500.
9. Section 406, Minimum Standards for Public and Private Structures, was identical to Section 801 of S. 1840 which required as a condition of any loan or grant that applicable standards in conformity with codes be observed and that the State and local governments evaluate natural hazards and take appropriate action to mitigate them.²⁷
10. Section 408, Disaster Grants for Needy Persons, was a modification of the similar proposal in S. 1840 in Section 501, Disaster Grants for Needy Families, but with some fundamental differences.²⁸ The S. 1840 proposal was for a maximum of \$4,000 for each "low income family" as defined by the President. Despite the title of this section, "Grants for Needy Persons," there is nothing in the language that suggests that only low-income families would be eligible.²⁹ It would provide "financial assistance to persons adversely affected...who are limited in their ability to meet extraordinary disaster-related expenses or needs" and would be made only when unemployment assistance under Section 407 "and other provisions of this act is insufficient to allow persons to meet such expenses or needs." Section 408 accepted the 75-25 percent formula of S. 1840 and the 3 percent allowance to the State for the cost of administering the program, but limited each grant to \$2,500.

11. Section 414, Community Disaster Grants, attempted to correct the ineffectualness of Section 214 of PL 91-606 by substituting community disaster loans, - the title above being in error. It offered a loan of up to 10 percent of an annual operating budget to a local government which had suffered a substantial loss of revenues as the result of a major disaster.
12. Title V, Economic Recovery for Disaster Areas, included six sections of the act, Sections 501-506 inclusive. Its purpose was to establish a system to plan for and provide resources through grants and loans for long-range economic recovery of a major disaster area.

At the time when S. 3062 was introduced in late February 1974, there seemed to be no special urgency in getting a new disaster relief bill passed and it was treated routinely in committee. Senate interest in the bill centered on whether or not it would include some provision or substitute for the loan forgiveness and/or low interest rates which Congress had shorn from PL 91-606 in passing PL 93-24 on April 20, 1973. Many members of Congress were disgruntled and angry and were resolved to reintroduce some kind of substitute program. At the time, it was not yet clear that the individual and family grant of Section 408 of S. 3062 would serve as an acceptable substitute. Congress had previously attempted to pass a bill, S. 1672, which the President had vetoed on September 23, 1973, and the Senate had failed to override (by a vote of 59-36). It had proposed that recipients of SBA and FMHA loans should have the option of choosing either a 3 percent interest rate combined with a \$2,500 forgiveness or a 1 percent interest rate with no privilege of loan cancellation. There were many States involved whose citizens might be benefited if some type of forgiveness could be restored, and especially so if it could be made retroactive. Major disasters were declared for no less than 35 States between the time forgiveness was repealed, April 20, 1973, and April 10, 1974, when the Senate approved S. 3062 in a revised form.

Immediately following the April tornadoes, the whole picture changed. Instead of the unhurried pace at which S. 3062 had been prepared, there was now a desperate urgency to getting the bill considered and enacted into law. For starting on April 3, a series of tornadoes had swept through a wide belt from Alabama northward and left havoc and destruction in almost a dozen States, leaving a wake of casualties in the hundreds and property damage in the tens of millions. The severity and magnitude of the disasters may be judged by the fact that all six States - Ohio, Kentucky, Alabama, Indiana, Tennessee and Georgia - were declared on the following day,

April 4, and a number of others - Illinois, North Carolina and Michigan - were declared in the ensuing weeks. What had begun as an even paced consideration to produce a workmanlike bill had changed into an air of crisis. The Senate was beseeched by members from the tornado torn States not to delay passage.

As S. 3062 emerged from its Committee in revised form, it had received a number of alterations in the language, a couple of new sections to replace the old, and an increase in the family grants benefits, but otherwise no significant changes in the bill's basic concepts. These may be summarized briefly here since they will be dealt with more fully later in this chapter:

1. The difference between "emergency" assistance and "major disaster" assistance was fully clarified.
2. The procedures for requesting each type of assistance and the commitment of State and local resources to obtain a declaration was more carefully formulated.
3. Section 314 was changed to limit the requirement of insurance to State and local governments only (no longer requiring it for individuals) with limitations on self-insurance for State governments only.
4. Two new sections were added: Section 318 which previously would have established Wage, Rent and Price Controls was changed to a procedure for ascertaining the Availability of Materials. Section 403 which previously provided for Restoration of Private Homes to Habitable Condition (mini-repair) was now made a part of the temporary housing Section 404. A new section 405, Protection of Environment, offered a new concept to clarify the act's interface with the National Environmental Policy Act of 1969.
5. Section 408 received not only a new name, "Individual and Family Grant Programs," but a clarification of its language and an increase in the maximum grant from \$2,500 to \$5,000.³⁰
6. Section 414, Community Disaster Loans, was liberalized to permit such loans up to 25 percent instead of 10 percent of the community's annual operating budget and to authorize cancellation of the loan after three years if its revenues are insufficient to meet the operating budget.

7. The date on which the act would take effect, which in Section 605 was originally to be "upon the date of enactment," was now changed to April 1, 1974, giving the States with the April tornadoes the full benefit of all the provisions of the new law. Only one section was made retroactive to an earlier date, viz., Section 408 which could be applied to States having had major disasters declared on or after April 20, 1973.

On April 10, when S. 3062 came before the Senate, its sponsors were immediately met with the issue of what would be done for those 35 States that during the past year had had declared disasters without the benefit of either the forgiveness feature or the 1 percent interest rate. Senator Huddleston of Kentucky (one of the States hit by the April tornadoes) moved to reinstate the \$5,000 forgiveness and low interest rate features as preferable to the Section 408 grant program even though the maximum grant had been doubled to \$5,000. He was persuaded to withdraw his motion when confronted with the certainty of a presidential veto. Senator Aikin of Vermont then pursued during the floor debate a different course, demanding that the retroactivity of Section 408 start not on April 1, 1974, but April 20, 1973, when loan forgiveness had been repealed. He demanded to know why Vermonters who had suffered through a declared flood disaster on April 23, 1973, should not also be entitled to the family grant. The matter came to a vote and Aikin's motion was defeated 49-40. Thereupon, Senator Eagleton offered another proposal, an additional Title VII which would provide a low interest loan program for possible flood victims in the 16,000 rural communities in the country which, due to legal constraints, were unable to participate in the Federal flood insurance program. Senator Eagleton finally withdrew his motion when faced with combined opposition of the majority and minority leadership. This was followed by Senator Stevenson's persistence in again asking that the definitions section be expanded to include "erosion." He was mollified by Senator Burdick's explanation that he considered it as included - that "erosion that is caused by high waters and wave action would be included," as Stevenson understood the clarification.

S. 3062 had several more hurdles to cross before reaching a vote. Senator Taft of Ohio - in which the City of Xenia, most severely damaged by the tornadoes, was located - wanted some further assurances that his people would be taken care of. He doubted his State's capability to administer the Section 408 grant program immediately upon its passage and asked that the effective date be changed to September 1,

and that it be administered by the Federal agencies. He also had some reservations about his State's having the liquidity to immediately pay its 25 percent share, suggesting that S. 3062 allow for individual contributions to make up the State's share. His objections were followed by those of Senator Cook of Kentucky who, citing the amount of damage sustained by some of his cities, argued that more liberal provisions in Section 414 for community disaster loans were needed. He was assured by the bill's sponsors that if Section 414's provisions proved inadequate, FDAA, the administering agency, would propose changing the law. Senator Baker of Tennessee, in whose State there existed a large number of REAs, asked assurance that they would be eligible for assistance under the nonprofit utility organizations and was assured affirmatively.

Since a whole week had elapsed since the tornadoes had struck and there were thousands of families waiting for the outcome, every effort was made by the bill's sponsors to speed its passage. It reached a vote on the same day - April 10 and was passed unanimously, 90-0.

But if the Senate leadership felt a sense of crisis to speed the bill's passage, the Public Works Committee in the House was not similarly disposed. As in the previous history of framing disaster relief legislation, the attitude in the House was to let the Senate develop the bill, and then allow itself the freedom to react. From a reading of the House record, one must conclude that when the Senate completed its action on April 10, very few members in the House had seen its bill, much less studied it. In the interest of conducting its business "of orderly legislative processes" (as stated by Representative Blackburn of Georgia) there prevailed a general unwillingness to be stampeded by the urgency of the tornado disasters into accepting the Senate's bill without further study. Both chambers were about to begin their scheduled Spring recess, and there was just no way possible for this bill to get fully considered in the time remaining. A postponement was unavoidable.

But these were only procedural obstacles. A really substantive one was the date on which S. 3062 would take effect, for which an agreement on the date of retroactivity was necessary. While there were doubtless many members in the House (as indeed in the Senate) who would have liked to return to the loan forgiveness feature, it was commonly understood that it lay under a threat of the President's veto. The choice then was the Section 408 grant or nothing. The Senate's bill had set its effective date as April 1,

1974, which was not at all satisfactory to the members of Congress of those States which would be deprived of the Section 408 benefits. How could the Committee leadership assure the House that the Senate would accede to the earlier date of April 20, 1973?

A solution for the impasse was finally devised by Congressman Blatnik of Minnesota, the Committee Chairman. Though he could not guarantee that the Senate would accede to the earlier effective date, he gave his word that the Conference Committee would try in good faith to obtain the earlier date, and that the recess period would be used to reach the earliest possible agreement with the other chamber. Blatnik had devised a stratagem by which the House would preserve its freedom of action in negotiating. He proposed to deal with S. 3062 by an amendment to PL 91-606 in the form of a new section, Section 256 to Title II of the act.³¹

In the Blatnik amendment, the entire contents of S. 3062 would be stricken after the enacting clause and the following would be substituted: "Section 256, Individual and Family Grants Programs. Where a State or a political subdivision is unable to immediately pay its share, the President is authorized to advance such State 25 per centum share, and any such advance is to be repaid to the United States when such State or political subdivision is able to do so"; the section was to take effect as of March 31, 1974; the definitions section, Section 102 was to be amended by inserting "mud-slide" after "earthquake."

By having struck out everything that followed the enacting clause of S. 3062, and by offering an alternative proposal that was part of the bill the House was able to meet with the Senate conferees to reach an agreement. The results of the meeting are shown in the Conference Report³² which presented the final bill. No changes were made afterwards. The Senate passed the bill on May 9, the House on May 15, and it was signed by the President on May 22.

IV. Analysis of PL 93-288

In format and organization, the sections of the act were identical to the revised S. 3062 as reported by the Committee a month before its passage. It was composed of six titles³³ as follows: Title I, Findings and Declarations; Title II, Disaster Preparedness Assistance (two sections); Title III, Disaster Assistance Administration, of 18 sections most of which were of the directive/administrative type; Title IV, Federal Disaster Assistance Programs, made up to

19 sections, six of which were directive/administrative, four of which were for public assistance and nine for individual assistance; Title V, Economic Recovery for Disaster Areas (seven sections); and Title VI, Miscellaneous (six sections).

A number of changes in the final act resulted from decisions reported by the Conference Committee, each of which will be analyzed in the appropriate section. Many of the changes-- some of content, but mainly language changes -- were those recommended by Thomas Dunne, FDAA Administrator. Mr. Dunne had appeared before the Disaster Relief Subcommittee in its hearings on March 6 to present his views. While presenting the Administration's position that S. 3062 went beyond the basic concept of "supplementary" assistance, he recognized that congressional interest in S. 1840 had long since waned, and that the alternative was to improve the drafting of the bill. He pointed out the defects of some of the sections in S. 3062 and suggested that he and the FDAA staff would be pleased to work with the committee to offer improved language.³⁴ A letter from Dunne dated March 29 proposed language changes for ten of the sections.³⁵ Most of these were accepted in the final drafting of the act.

The title of the act as proposed by S. 3062 was changed from the "Disaster Relief Act Amendments of 1974" to the "Disaster Relief Act of 1974" since it had now become a complete replacement of PL 91-606.

Title I. Findings, Declarations, and Definitions

Under Title I, four more purposes of the act were added to the three included under PL 91-606, with minor changes in the language. In abbreviated form, these were: (1) revising and broadening the scope of disaster relief programs; (2) encouraging the development of "comprehensive disaster preparedness and assistance plans, programs, capabilities and organizations by the States and by local governments" (in PL 91-606, "disaster relief plans, programs and organizations by the States" only); (3) achieving greater coordination and responsiveness of disaster preparedness and relief programs (in PL 91-606, "responsiveness of Federal major disaster relief programs"); (4) encouraging selfprotection by obtaining insurance; (5) encouraging hazard mitigation, including land use and construction regulations; (6) providing Federal assistance for both public and private losses; and (7) providing a long-range economic recovery program.

Section 102, Definitions:

A number of major alterations were made in the definitions section as compared with that in PL 91-606. The most important

of these, of course, was the differentiation between a "major disaster" (as it had been understood in PL 91-875 and PL 91-606) and a new category, of event, an "emergency."

In PL 91-606, ten disaster phenomena or events were listed as those which in the determination of the President could constitute a "major disaster":³⁶ Hurricane, tornado, storm, flood, highwater, wind-driven water, tidal wave, earthquake, drought, fire, plus "or other catastrophe." To these Section 102 added six more: tsunami, volcanic eruption, landslide, mudslide, snowstorm and explosion.³⁷ Almost nothing is known about the origin of these proposals. The written record is silent on who proposed them or the circumstances that led to their being included. It is assumed that these changes originated in the executive sessions of the Subcommittee or with its staff.

A few other changes were also made. One of these is including under the meaning of "(6) Local Government," "any Indian tribe or authorized tribal organization, or Alaska Native village or organization."³⁸

Another change was the deletion in the definitions of "Administrator" as the Administrator of FDAA (comparable to "Director" of OEP in PL 91-606). At Mr. Dunne's urging, the bill was changed to vest all the legal authority in the act in the President "so as to not restrict his option" of delegating to the agency "he deems most capable of carrying out the program."³⁹

The really significant change in the definitions had to do with the clear distinction made between a declared "emergency" and a "major disaster." This was one of the important innovations in PL 91-288. During the Government's experience in disaster relief, situations had occurred in which the Government's assistance was needed, but on a scale less than that of a major disaster, to avoid having to trigger the entire panoply of provisions when the latter is declared. Clearly, such situations called for greater flexibility of response - possibly prior to the actual disaster, for a shorter period, or for some particular kind of response aimed at the problem at hand. PL 91-606 had attempted in its Section 221, Pre-disaster Assistance, to find a partial solution by enabling the President to declare if he found that a major disaster was "imminent ...to avert or lessen the effects of such disaster before its actual occurrence." But Section 221 was less than satisfactory as an answer to the problem. It raised other questions as to the degree of reliance of "imminence" or threatening conditions that would justify a major disaster declaration. Moreover, there

was a need to give the President an option of providing discretionary choices of types of response that need not invoke all the provisions of assistance the act offered for major disasters. The Administration's S. 1840 had offered such a solution by providing "Emergency Assistance" under a separate Title III. It gave the President, upon request of a Governor, the authority to determine "that a major disaster is imminent, or that emergency services are necessary to save lives and protect the public health and safety...and to provide such emergency services under this title as he deems necessary to lessen the effects of such disaster or danger."

Senator Burdick's S. 3062 had adopted the concept of "Emergency Assistance" as separate from major disaster assistance in two ways. In Section 102, there were two definitions, one for "Disaster" and one for "Major Disaster." The former was defined to mean "any damage caused by..." the full list of disaster occurrences mentioned in the bill "...which require emergency assistance." "Major disaster" was defined as "...any disaster which in the determination of the President is of sufficient severity and magnitude to warrant disaster assistance under this act above and beyond the emergency services by the Federal Government to supplement the efforts and available resources of States and local governments...in alleviating the damage, loss, hardship or suffering caused thereby."

As perceived by Mr. Dunne, the language "would cause confusion in administering its provisions" in using the two terms "disaster" and "major disaster"... "interchangeably throughout the bill." He suggested that the two types of assistance be treated separately "for maximum clarity," either by putting "less-than-major disaster assistance in a separate section" or by giving it a separate title of "Emergency" in the act (somewhat similar to S. 1840) which "would be made available without a major disaster declaration."

The final product of the changes in Section 102 are noted: the term "disaster" was changed to "emergency" which was defined to mean any of the disaster occurrences listed therein "...which requires Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety or to avert or lessen the effects of a disaster." Several points should be noted here: The first is the addition of the word "property" in the definition "to save lives and protect property, public health and

safety..."; The second is that the word "imminent" was deleted, for which was substituted "...to avert or lessen the threat of a disaster" which would authorize the President to take action prior to the event. The third is that "Emergency Assistance" was made a section (Section 305) of the act, not a separate title - with authority to determine where an emergency existed which warranted Federal assistance.

Title II, Disaster Preparedness Assistance

Title II was composed of only two sections, 201, Federal and State Disaster Preparedness Programs, and 202, Disaster Warnings. Although both sections were to some degree a continuation of previous legislation, the disaster preparedness section was so enlarged in its concepts as to almost constitute a new activity. The fact that it was given a separate title of the act reflects its new significance.

Section 201, Federal and State Disaster Preparedness Programs

Except for two very minor changes, Section 201 is an exact duplication of Title VII of the Administration's S. 1840. One item of subsection (a) was deleted in writing the new law, and one item in (c) was added. The deletion was item (8) assistance in updating State legislation, which the conference committee may have felt infringed upon State authority to decide the content of its own laws. The item added was the word "prevention" in referring to the purpose for which the \$250,000 grants to the States were to be used, which now reads, "...for the development of plans, programs and capabilities for disaster preparedness and prevention."

Section 201 is composed of four subsections: The President is authorized "to establish a program of disaster preparedness, under which he may utilize the services of all appropriate agencies," and which includes seven numbered means of accomplishing such a program: (1) disaster plans for mitigation, warning, emergency operations, rehabilitation and recovery; (2) training and exercises; (3) post-disaster critiques and evaluations; (4) annual program reviews; (5) coordination of Federal, State, and local preparedness programs; (6) application of science and technology; (7) research.

Subsection (b) provides for technical assistance to States in developing comprehensive plans and practicable programs against disasters, including hazard reduction, avoidance, and mitigation, and for assistance to individuals, businesses, and State and local governments for their recovery from disaster damages.

Subsection (c) authorizes a single grant of up to \$250,000 to each State "for the development of plans, programs, and capabilities for disaster preparedness and prevention," for which it has up to one year from enactment of the act to make application. It further describes the requirements for obtaining the grant, viz., designating an agency to administer the grant, and "submitting a State plan"⁴⁰ which sets forth: A comprehensive and detailed program "for preparation against and assistance following, emergencies and major disasters," and includes provisions for appointment and training of staffs, and formulation of regulations and procedures and conduct of exercises.

The last subsection (d) continued, without change in the language or content, the same provision in PL 91-606, a matched grant of up to \$25,000 per year to any State for the purpose of "improving, maintaining or updating State disaster plans."

The provisions of Section 201 have two separate roots. The encouragement of State governments to prepare State disaster plans by the use of Federal grants had its beginning in the 1969 Act in which States could apply for a total grant of up to \$250,000 to be matched on a 50-50 percent basis. That provision was continued in PL 91-606, to which was added the improvement grant of \$250,000, also with matching of funds. The effects of neither of these previous grants had proven propitious. As Senator Burdick recounted in introducing S. 3062, only a small number of States had participated in the preparedness grants under the previous laws: only 14 States under the 1969 act with a total Federal expenditure of \$217,000, and 11 States under the 1970 act with grants totalling \$712,000. Only one State, California, had used the full amount of the grant. Senator Burdick concluded that although other State Governors had professed an interest in the program, "...competition from other programs for limited States' resources and the low priority sometimes assigned planning of this type tended to lessen the number of applicants." Clearly, to accomplish the objectives of greater disaster preparedness, it was considered necessary for the Federal Government to supply the entire subvention. The total amount of the grant had not changed through the three enactments; it must have been presumed to be adequate.

The second root for the ideas in Section 201 came from S. 1840 of which it was almost a copy. Title VII of S. 1840 was the result of the Disaster Study Task Force created under the 1973 Act, PL 92-385. One of its directors had been responsible for preparing the "Disaster Preparedness" report to the Congress in 1972. The report had shown the need not only of more and more effective measures for preparedness such as it

outlined, but also of greater coordination of the many Federal agencies engaged in such work, and of the need of preparedness measures by State and local governments. Clearly, under S. 1840, with the States themselves managing and administering disaster assistance (with 75 percent Federal funding), there was a need of gearing up to perform these new functions. Title VII was devised mainly to fill these new needs. When called upon to offer his opinion on Section 201 at the hearings, Mr. Dunne stated that since the grants "...are intended to strengthen the States' capabilities to cope with major disasters, ...this makes sense in S. 1840...but this logic is not apparent in S. 3062 which pays the States to gear up, then leaves little for them to do aside from requesting and accepting disaster assistance within their jurisdiction." Congress, nevertheless, chose to include the provisions of Section 201 in its entirety, leaving to the President his interpretation as to what was to be meant under his authority "...to establish a program of disaster preparedness." Section 201 gave him the tools to work with--an expanded arsenal that included plans, training, critiques, authority to coordinate, research, and science and technology. Section 201 also enlarged the scope of legislation to comprehend hazard reduction, avoidance, and mitigation. It is not clear from reading the hearings that the implications of the disaster preparedness title were fully understood when the act was passed. These provisions were rarely remarked on. But whatever may have been their views on how broad the scope of the preparedness program should be, the writers of the legislation could hardly have designed a program in language more comprehensive than in Section 201(a).

Section 202, Disaster Warnings

The section of the law on disaster warnings originated in the 1966 act as Section 5 of PL 89-769 which authorized the Secretary of Defense to utilize or to make available the facilities of the civil defense communications system to provide warnings of the imminence of disasters. The provision was repeated without change in Section 210 of PL 91-606 except that the authority was vested in the President.

Although the purpose of the disaster warnings section in Section 202 was not changed, several new paragraphs were added to what had been in the former law, viz., subsection (c).

The new Section 202 was lifted without change from S. 1840 and was included as part of Title II on Disaster Preparedness. The three new subsections were: (a) a general statement

authorizing the President to "insure that all appropriate agencies are prepared to issue warning of disasters to State and local officials"; (b) ... "to provide technical assistance..." (d) to enter into agreements with the agents of private or commercial communications systems "who volunteer the use of their systems on a reimbursable or non-reimbursable basis."

Title III - Disaster Assistance Administration

By including in the law a separate title with the name of "Disaster Assistance Administration," Congress was taking note of the fact that those sections in the law that were directive/administrative should be segregated from those which provided public or individual assistance. The previous Act, PL 91-606, had a similarly named Title II, The Administration of Disaster Assistance, but which combined under separate Parts, A, B and C the entire substantive contents of the law - 35 sections. Title III in the new act brought together almost all the directive/administrative sections - a total of 18.

The concept that the disaster relief act should bundle together under a single title all the directive/administrative sections was taken from S. 1840, and had been adopted by Senator Burdick in his S. 3062, even though not carried out with complete consistency.

Section 301, Procedures

The formulation of new procedures under which the Governor may request and the President may determine to grant Federal disaster assistance was made necessary by the law now providing two different types of event - an emergency and a major disaster. It was apparent that for the former, in which the Government provided limited aid, and for which an immediate decision was usually required, a formulation different from that of a major disaster was needed.

The previously existing request procedures should be reviewed here to fully understand the changes effected in the new act. In the original act, PL 81-875, no procedures to obtain Federal assistance were specified except that the Governor "...shall give assurance of expenditure of a reasonable amount of the funds of the government of such State, local governments therein, or other agencies." Also, the act made clear that Federal disaster assistance was to "supplement the efforts and available resources of States

and local governments" in "carrying out their responsibilities to alleviate suffering and damage." (Emphasis added) From the beginning, the Executive orders governing PL 81-875 had cautioned that Federal assistance was only to supplement and not be in substitution for what the States and local governments could do for themselves. Not until the mid-1950s was it found necessary to establish a schedule of a minimum threshold amount for each State for which the Governor, in requesting the assistance, must certify that the State has expended or will have expended that amount for that disaster and others during the previous one year period.⁴¹ That system, despite its defects, seemed to work satisfactorily, although the required amounts probably needed updating due to inflation. As Mr. Dunne, FDAA Administrator, wrote to Senator Burdick, "Although past certification experience leaves something to be desired, this requirement has caused some Governors to consider carefully before requesting Federal assistance."⁴²

The elimination of the use of the required expenditures schedule appears to have resulted not from a deliberate decision that it was no longer useful but rather as a reaction in adjusting to and finding more fitting language for S. 3062. The original Section 301 in S. 3062 was a verbatim copy of the corresponding section in S. 1840. It provided that all requests for disaster assistance shall be made by the Governor, based on "a finding" of magnitude and severity beyond the State and local government's capabilities, upon which the President would make his determination of whether to declare a major disaster. There was no language in S. 3062 that declared or even inferred that the disaster responsibility belonged to the States, and the only reference to the aid being supplementary was the use of the word "to supplement" in Section 101 Findings and Declarations, in (4) requiring the "obtaining of insurance coverage to supplement or replace governmental assistance." Under S. 1840 the Federal Government would be paying only 75 percent of the disaster assistance costs on a set formula basis. Accordingly, there would be no need of any kind of threshold of expenditures for a State to obtain such aid once the President was convinced of the severity and magnitude of the disaster. But since S. 3062 was basically a continuation of the kinds of assistance under PL 91-606, a threshold procedure was necessary. Once Dunne brought it to the Committee's attention, the procedure was changed. The formulation was Mr. Dunne's as proposed in his letter of March 29. Whether or not Mr. Dunne intended to eliminate the use of the expenditures schedule is not shown from the record. In any case, the Senate did adopt his reformulation of a reasonable expenditure commitment by the State and local governments as it now appears in the Act.

Section 301 consists of two parts which describe the procedures for obtaining a declaration by the President: (a) of an emergency, and (b) of a major disaster. For an emergency declaration: all requests must be made by the State's Governor, based on his finding of the need for Federal assistance that "the situation is of such severity and magnitude...beyond the capabilities of the State and the affected local governments"; and the Governor must furnish to the President information describing "State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and extent of Federal aid required." Based on such a request, the President "may determine that an emergency exists which warrants Federal assistance."

The procedures required for a major disaster are similar to those for an emergency declaration, using slightly different language in one respect: instead of being based on "the Governor's finding" of severity and magnitude, the language reads "a finding." In addition, however, certain substantive requirements are imposed: "...the Governor shall take appropriate action under the State law and direct execution of the State's emergency plan. He shall furnish information on the extent and nature of State resources which have been or will be used to alleviate conditions of the disaster, and shall certify that for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) (emphasis added) will constitute the expenditure of a reasonable amount of the funds for alleviating" damage, loss, and suffering. "Based upon such Governor's request, the President may declare that a major disaster exists, or that an emergency exists."

It should be noted that in all three of the disaster relief acts, PL 91-875, PL 91-606, and now PL 93-288 - Congress had chosen to evade in the language of the act some specific instructions or guidance as to what was a reasonable expenditure by the State and local governments. In this instance, PL 93-288 offered only the specific that the State's "commitments must be a significant proportion." But lest one understand this to mean that the procedures were to be interpreted adversely against the State, the Conference Committee indicated that the information provided to the President "is intended to facilitate the rendering of assistance," and not to have the opposite effect. The whole statement is worth quoting:

In order to avoid any possible misunderstanding, it is the wish of the conferees to emphasize that the requirement of Section 301 that Governors shall furnish to the

President certain information describing State and local efforts and resources intended to facilitate the rendering of Federal assistance under this legislation, and it is not intended to delay or impede the procedures through which such assistance is provided.⁴³

Since the requesting procedures and the conditions imposed for obtaining PL 93-288 assistance are crucial to an understanding of how the law works, it is advisable to summarize some of the points above: (1) A new flexible procedure was inherent in the language of Section 301. (2) Certain additional requirements were described for obtaining a major disaster declaration as compared with those for an emergency, but which left to the President the option of declaring an emergency, even though a major disaster declaration had been requested. (3) The State would be required to have executed its emergency plan, and would furnish information that would satisfy the President that it had made a reasonable commitment of State and local government resources as part of its disaster relief responsibilities. (4) Where the fixed schedule used under PL 91-606 was based primarily on State and local expenditures during the past twelve-month period as certified by the Governor, Section 301 now included obligations (future expenditures) as well as expenditures already made. (5) The section retained the language of PL 81-875 in requiring expenditure of a "reasonable amount of funds," but added that the State's share "must be a significant proportion." (6) With no formula other than a determination of a "reasonable amount of funds," State entry to PL 93-288 assistance would be made ad hoc based on each situation as it was presented.

Section 302, Federal Assistance

Section 302 is composed of three parts, the first two of which are closely related, the third being an unrelated provision added to meet a current political situation. Subsection (a) empowered the President "in the interest of providing maximum mobilization of Federal assistance" to "coordinate...the activities of all Federal agencies...to utilize available equipment, supplies..." etc. and to "prescribe such rules and regulations as may be necessary and proper to carry out the provisions of this Act...". Subsection (b) authorized "any Federal agency... if so requested by the applicant State or local authorities, to modify or waive... such administrative conditions...as would otherwise prevent the giving of assistance under such programs...". The last subsection (c) provided

that "notwithstanding any other provision of law" the "repair or replacement of farm fencing damaged or destroyed as a result of a major disaster," shall be considered "an emergency conservation measure" under an appropriation act of 1957 or any other provision of law.

Section 302 may or may not be considered as an entirely new section depending on how it is viewed. It did not exist in PL 91-606. Some of the contents of (a) are to be found in Section 203 (a) of PL 91-606 (also included in Section 306 (a) of PL 93-288) which states that on direction of the President, Federal agencies are authorized to provide assistance by utilizing or lending their equipment, supplies, etc. With the authority of the executive branch to execute the laws, and with this law written with an unclouded vesting of authority in the President to carry out its provisions in nearly every section, one must wonder why Congress felt it necessary to further reinforce his acknowledged authority by means of this added section. The explanation lies in the historical development of PL 93-288. S. 1840 had such a section - Section 202 also called Federal Assistance. In addition to parts (a) and (b), it also had a part (c) which provided that "All assistance rendered under this Act shall be provided pursuant to a Federal-State disaster assistance agreement unless specifically waived by the President." In preparing his own bill, Senator Burdick copied that section in its entirety as his Section 302. It was included in S. 3062 when passed by the Senate on April 10.

It is desirable at this point to trace the derivation of the first two parts of Section 302. The contents of subsection (a) can be found in Section 5 of PL 81-875 which uses the same language, viz. "In the interest of providing maximum mobilization ...the President is authorized to coordinate ...the activities of Federal agencies... and direct any Federal agency to utilize its available personnel, equipment, supplies...in accordance with the authority herein contained." The President "may from time to time, prescribe such rules and regulations as may be necessary... may exercise any power or authority conferred on him by any section of this Act directly or indirectly or through such Federal agency as he may designate."⁴⁴

Also, the substance of Section 302 (b) may be traced to the first two Executive Orders, 10221 of 1951 and 10427 of 1953, both of which convey the same meaning in slightly

different language, though not referring specifically to modifying or waiving of "administrative conditions."

The last part of the section, i.e., (c) clearly is unrelated to the two previous parts, and was added by the Conference Committee. Reference to the congressional debates during the passage of S. 3062 reveals that many members of rural and agricultural constituencies of both chambers were exasperated⁴⁵ at the failure of the Agricultural Stabilization and Conservation Service (ASCS) of the Department of Agriculture to utilize its legal authority to provide the 80 percent Federal cost-sharing for both debris clearance in rural areas and the replacement of farm fencing necessary "...to return the land to productive agricultural use."⁴⁶ The conference report read a stern lecture to ASCS that its members were dissatisfied with the fact that after three weeks following the April 3-4 tornadoes, with "hundreds of miles" of farm fencing destroyed, ASCS had not designated "a single county...as eligible for disaster assistance." Subsection (c) was put into the law to direct ASCS to replace the farm fencing. The report further made clear that it was Congress' intent that the Department of Agriculture was to treat debris clearance in rural areas "...under its emergency conservation program without restrictive limitations, and in a way that will provide benefits no less generous to farm families in rural areas than those extended to city dwellers in urban areas."⁴⁷

Section 303, Coordinating Officers

From a reading of the Senate hearings, one might have expected that in framing Section 303 on Coordinating Officers, its contents would have been considerably changed from the corresponding Section 201 in PL 91-606. Indeed, the subject of the role of the Federal Coordinating Officer (FCO) occupied a great deal of the Subcommittee's attention, and particularly so in the Pennsylvania hearings in which the adequacy of the FCO's authority was severely questioned. Nevertheless the section on coordinating officers in PL 91-606 was reenacted with no change - except to add a subsection (c) concerning the designation of a State Coordinating Officer.

Section 303 is made up of three parts: (a) Immediately upon a declaration of a major disaster,⁴⁸ the President shall appoint a "Federal Coordinating Officer to operate in the affected area."

(b) The FCO was directed to perform the following: (1) make an initial appraisal of the types of relief most urgently needed; (2) establish such field offices as he deems necessary and as authorized by the President; (3) coordinate the administration of relief, including the activities of the State and local governments and the voluntary relief organizations - the Red Cross, the Salvation Army, and the Mennonite Disaster Service, and others - which agree to operate under his advice and direction; (4) take such other action "...as he may deem necessary to assist local citizens and public officials in promptly obtaining assistance to which they are entitled." he added subsection (c) provided that the Governor would be requested "to designate a State Coordinating Officer for the purpose of coordinating State and local disaster assistance efforts with those of the Federal Government."

The provision for appointing a Federal Coordinating Officer originated in Section 9 of the 1969 act, PL 91-79, which stated his duties only in general terms and which also required the appointment of a State Coordinating Officer as part of the application process, in Section 8, for a State planning grant. For a record of the development of the same Section 201 in PL 91-606, the reader is referred to Chapter V, and particularly the Senate Committee's report which stressed its interpretation of the FCO's authority as to include "all the Federal agencies."

Since there has so frequently arisen the question of the breadth and scope of the FCO's authority, it is desirable to quote extensively the interpretation in the May 13, 1974, report.

The conferees wish to emphasize that the Federal Coordinating Officer will have a vital role in the disaster area. It is through the proper execution of this essential activity that the entire range of assistance available under Federal, State or local law, and assistance made available through voluntary and charitable agencies, and institutions, is brought to bear with efficiency and dispatch, and without costly and delaying duplications. Federal assistance is not limited to that authorized by this legislation. There are other special authorities, such as those of the Department of Agriculture and the Corps of Engineers. Federal agencies may be able to assist through priority of application of their regular programs. Since it is not feasible to bring all of the Federal disaster assistance potential into one single law, the Federal Coordinating Officer must also make certain that all the Federal agencies are carrying out their appropriate roles under their own legislative authorities. 49

Yet, over two years, judging from the extensive discussions in the Hearings, there must have existed considerable ambiguity on how the FCO was to operate and the precise limits of his authority. For that reason, this history includes the interrogations and the answers given by the various officials when questioned on this subject. For example, Section 201 of PL 91-606 defines the role of the FCO in fairly precise terms, and yet in the Wilkes-Barre Senate hearings, a number of witnesses suggested that he lacked power and that some kinds of a "czar" was needed.⁵⁰ So much dissatisfaction existed in that area that some three months after the Agnes declaration, President Nixon had seen fit to send as his "Special Assistant" Frank C. Carlucci, Deputy Director of OMB.⁵¹ Mr. Carlucci, a native of the nearby Scranton area, set at rest any questions as to who was "boss" even while retaining the OEP appointed FCO.⁵²

So effective had been Mr. Carlucci's brief sojourn that at the Wilkes-Barre hearings,⁵³ two themes were frequently expressed: (1) that the FCO must be perceived as a personal representative of the President in order to be effective and (2) that the word "coordinating" must be interpreted as administering and directing. The following colloquy took place between Senator Burdick and Mr. Carlucci:

Senator Burdick. Most of the witnesses who testified in our Wilkes-Barre hearings would not agree with your comment that a "Federal czar" is not needed for major disasters. Is it not true under Public Law 91-606 now that the Federal Coordinating Officer named by the President for each major disaster has full coordinating power similar to a so-called czar?

Mr. Carlucci. He does on paper, Mr. Chairman, to be quite honest with you. But, as I indicated in my statement, when you have Federal czars who are essentially civil servants, it is quite obvious that they don't have direct authority from the President and they do not have the power that I inherently had in my role in Wilkes-Barre. But they do have coordinating responsibility.

Senator Burdick. And they get that directly from the President.

Mr. Carlucci. They do get that directly from the President. There is a difference between getting it directly from the President on paper and getting it directly from the President in person.⁵⁴

If one were to summarize objectively the testimony and evidence presented at the Wilkes-Barre hearings on the subject of the FCO's authority, these would seem to be the conclusions to be extracted: The problem was felt mainly with reference to Pennsylvania only, and was hardly mentioned in the New York or the South Dakota hearings. The OEP Regional Director for the New York Agnes disaster, in contrast to that of Pennsylvania, received only repeated commendations for his performance as FCO, suggesting that elements other than the legal authority in the act accounted for the differences in the perceptions. Indeed there were many: the greater magnitude and severity in the Pennsylvania disaster, in which one problem alone was housing 20,000 families in three months; a general lack of preparedness at all three levels of government or what Wilcox referred to as "underpinning of operational capacity to do the job";⁵⁵ the fragmentation of authority of the FCO by having two FCO's in Pennsylvania and by too frequent changes of FCO officers and their back-up personnel;⁵⁶ disagreements in policies and disharmony with the State government in a situation that more than ever required smooth working relationships.

But even if all of these problems were surmounted, there still remained an open question of what was the full meaning in operations of the word "coordinating" or "to coordinate"? The Webster Collegiate Dictionary defines the verb "coordinate" as "to put into the same order of rank, to bring into a common action or condition, to become coordinate so as to act together in a smooth concerted way, ...to harmonize." The full meaning of the term may be even better understood from the meaning of the noun, "coordinate" as "one who is equal in rank, authority, importance with another." When Congress in drafting Section 9 of PL 91-79 chose to name a "Federal Coordinating Officer," it undoubtedly used a term of common bureaucratic usage, and one that immediately posed no problems or objections that would be raised if Congress had instead used other words to describe his authority. In choosing the word "coordinating," did Congress intend to conceal an iron fist within the velvet glove? Obviously, no problems are raised in coordinating agency programs when all the agencies to be coordinated are in agreement with the directives issued or if they acquiesce without objection. But what if they do not? Does the FCO then have authority to direct or to control their actions? The comments of Mr. Wilcox on this subject are of interest.

"I think the language of the act ought to be improved to indicate that Federal agencies ought to be directed to work together under the Coordinating Officer. I

would change the name from the Federal Coordinating Officer. Coordination is waiting for the slowest runner. I think we ought to change the name to Administrative Officer, so it is clear he is to control and direct these other officers in the field, much like a theatre commander in the World War II commanded all the troops whether Army, Navy, or whatever they were, in the field."⁵⁷

The concept was best stated in the words of Arnold Grushky, Deputy Director of The New York Office of Natural Disaster and Civil Defense, who offered this comment: "The point I think we are all trying to make is that the individual and the agency must be capable of directing and coordinating the Federal responsibility...The individual who is charged with the coordination has to be recognized as the coordinator and not first among equals because the first among equals will be just another one of the equals."⁵⁸

Another of the problems raised concerning the efficacy of the FCO was often affected by difference of Federal grade levels in the field. Could an FCO with a grade level of GS-15 effectively "coordinate" Regional Directors of other agencies with grades of GS-16 or GS-18?⁵⁹ A corollary question that was asked during the hearings was how was the impending shift of the disaster relief function from OEP in the Executive Office of the President to FDAA in HUD going to affect the status and coordinating authority of the FCO? The transfer was still three months in the future when the question was asked by Senator Burdick of George Hastings, the Regional Director from Dallas who had served as the FCO in the Camille disaster. Burdick asked if it will be "feasible for HUD as only one among many different agencies to be as effective a coordinating authority as OEP has been?" To this, Hastings replied, "No sir, at this time I can't say it will be any different because what will not be different is carrying out the President's authority. He will be giving us his authority to carry out his program in the field...we will continue to be appointed the Federal Coordinating Officer by the President when he makes a declaration."⁶⁰

In the foregoing pages, the writer has tried to extract from the Senate hearings the substance and the key issues presented on the subject of the operational authority of the FCO - one that is critical to the success of the program. One of the points not mentioned at the Wilkes-Barre hearings was that the problems of the FCO in Pennsylvania were so unique to the situation and magnitude of the disaster there that

they had not been presented anywhere else. Indubitably, the greater the disaster, the greater must be the FCO's authority whether it be called coordinating or directing. And if the scale and scope of the disaster is greater, so must the FCO's authority be perceived as having the unquestioned and continuing support of the President from whose well it is drawn. When the Conference Committee met to determine the final shape of Section 303, it chose to give its approbation to repeating what was in the previous law rather than to trying to formulate new language in the act. In doing so, however, it added a clarification of the scope of the FCO's authority by the above quoted statement in the Conference Report. From that point of view, the FCO's authority was to be interpreted broadly to include the coordination of programs under the Federal agencies' own statutory authority. Congress desisted however, from attempting to strengthen or clarify the language in Section 303 should the Federal agencies frustrate the FCO's decisions, choosing instead to re-use the language of the existing act. Since FDAA had not asked for a change in the language - as appears from the record - Congress may have concluded that the mantle of presidential authority could continue to rest adequately and safely on the FCO without further change in the act.

Section 304, Emergency Support Teams

The section on Emergency Support Teams was one of the new provisions in PL 91-606 - Section 202 and it was renewed without change in PL 93-288. It authorized the President to "form emergency support teams of Federal personnel to be deployed" in a major disaster area, and upon whose request the head of a Federal agency was directed to detail such personnel as may be needed, with assurance of no loss of seniority or pay. There is no written record of why this provision had been added as a separate section in the law since the procedures it directed had already been regularly used previous to PL 91-606 by OEP. Indeed, it is hardly conceivably that the coordinating agency - OEP or FDAA - could carry on its functions without such personnel support. The need for including this section in the act is no greater than the requiring of FDAA to use Disaster Assistance Centers for individual assistance - a regular practice although not specified in the act. The use of the word "teams" suggests that Congress may have had in mind establishing distinctly organized teams of designated agency personnel, rather than on an ad hoc basis as needed. Several statements were made by OEP/FDAA regional directors during

the hearings, which explain how the support teams are organized and utilized: When asked by Senator Domenici to tell him "about this whole aspect of the team approach to the problem," George Hastings of the Dallas office replied,

Mr. Hasting. The team approach that you are speaking of, Senator.... is composed principally of experts from other agencies, these 20 agencies that we have been talking about here who are specialists in the relief actions that are necessary.

As in your State when we had the floods last fall, we called on the Transportation Department to give us assistance: we got assistance. We called on the Corps of Engineers to give us assistance. We called on the agencies who had people that are experts in the field that we needed to complete the recovery act. These teams are on standby all the time. I am sure that each regional director performs similarly to what I do.

If I know that a hurricane is out here a day or two before it makes landfall, I make contact with all of these administrators in the Dallas region. I say, "Look, it is out here. When it hits we are going to call on you. You have a nucleus of engineers prepared to travel with me to this disaster area."

I have never made a request on a Federal agency yet for support that I didn't get it, and I got expert people. So that is the team that I think Congress was thinking about when they wrote the law.⁶¹

When queried on the same subject by Senator Domenici, the following statement was made by Francis Carney, the regional director of Region III.

Mr. Carney. The theory of this law sir--well, let's take contracting. The Corps of Engineers is the best contracting agency in the U.S. Government. When we need contracting for debris removal, mini repair, such mission assignments go to the Corps.

Our job in administering the Disaster Fund is to use the resources of the Federal Government, and the agencies that do those jobs the best. The Corps of Engineers for contracting, HUD for temporary housing, Small Business Administration for disaster loans (although small business loans do not come out of the President's

Disaster Fund). But in the theory and organization of it, you use the agency that does the job the best. You have a team of senior officials representing these agencies who go into the disaster area right on the heels of the OEP Regional Director. I had designated that team and they went into Agnes with me.

Senator Domenici. Your interpretation of the law is that the professional team that you are a part of works on an ad hoc basis rather than on a continuing state of preparedness basis? So if there are certain things that should be learned from the disaster, they are that the capabilities of the Federal Government are brought in on a team basis. No one is reducing that to an ongoing team but assuming the next time you have a disaster you call on HUD and they have a team of trained people there?

Mr. Carney. Absolutely. Obviously, sir, it took a lot less Federal people to handle a disaster of the Buffalo Creek magnitude than it did Agnes. You put the amount of resources and people into a job that is necessary to complete the job within a reasonably effective time.⁶²

A similar explanation of the use of the emergency support teams was offered by Thomas Casey, the director of the newly established New York Region II office.

Mr. Casey. We had such a program even before Agnes. I would like to offer some sort of an explanation insofar as Agnes is concerned. I became regional director of OEP, New York City, in March of 1972, two months after the region was formally designated.

We were a new region. My staff comprised at that time, Mr. Steinlauf, Mr. Mastroianni and myself. We had much work to do. But training and establishment of support teams was one of the first items that we addressed.

We did, effectively, train and orient one such support team. That team are the people who carry out the functions depicted on Chart A. The combined unit, communications, administrative support, personnel, etc., was trained by bringing them all together in one session and orienting

them on the whole program and then separating into their respective areas and addressing those specific concerns, responsibilities and authorities they were to operate under. After we completed the individual workshop sessions, we brought them all back together again and we ran through an exercise. These people wore the OEP that when they came into the disaster area. They are vested with whatever authority I have. But they come from other Federal agencies. They are augmentation personnel. That is one support team.

In the meantime, we were developing other support teams. Another type of support team are the Federal engineers who prepare the damage survey reports. That effort had not progressed as far along when Agnes struck. But we did have several training sessions where we pulled the engineers together and explained the overall program, the eligibility criteria and established standards for estimating costs.

But I have to admit that we did not get far enough along.⁶³

Section 305, Emergency Assistance

The full meaning of this new section of the act cannot be understood without reference to the definition of "Emergency" in Section 102, which was explained above. Section 305 describes the purposes and means under which the President may carry out his emergency declaration.

Subsection 305 provides that in an emergency the President "may provide assistance to save lives and protect property and public health and safety." Subsection (b) then states that such assistance may be provided through technical assistance and advisory personnel by the Federal Agencies to the State and local governments, through warnings, public information, technical advice on management, and "reduction of immediate threats to public health and safety," by provision of medicine, food, and other supplies and emergency assistance. The last part (c) of the act is an expansible provision, that the President may "provide such other assistance under this Act" as he "deems appropriate," i.e., for emergency assistance under Section 102 (1).

The background of this section is an interesting one. In our analysis of Section 102, Definitions, it was explained that the idea of a separate category of emergency assistance as opposed to major disaster was first presented in S. 1840 as a separate Title III. The idea was copied in S. 3062 in

essentially the same form in which it appears as Section 305 in PL 93-288, but with two changes made by the Conference Committee. When S. 3062 reached the Conference Committee, part (a) read: "...may provide assistance to save lives and protect public health and safety or to avert or lessen the threat of a major disaster". It will be observed that the language now reads, "...protect property and public health and safety," and that "or to avert" etc. has been deleted. The deletion of the latter phrase, "to avert or lessen the threat of a major disaster" can probably be explained by the fact that this language is already included in the Section 102 definition and is, therefore, not needed

The full statement of the Conference Committee further clarifies the uses and the intent of Section 305:

It is the intention of the conferees that the provisions of Section 305 shall allow the President to undertake whatever action he considers necessary to avert a disaster when conditions do not warrant the full application of assistance under a major disaster declaration or when a major disaster threatens and special expedient actions can be taken to avert or lessen its probable effect. Such section is intended to provide the President with authority to act before a disaster strikes, so that means may be developed for the lessening of the impact and toll of disasters. It is not intended that Section 305 (c) be viewed or applied as a way to avoid the more specific commitments by the State in requesting and receiving assistance under a major disaster declaration. The purpose of such section is to make available emergency assistance which, because of the pressures of time or because of the unique capabilities of a Federal agency, can be more readily provided by the Federal Government. It is specialized assistance to meet specific needs.

It is also the intention of the conferees that the President, in providing assistance under this section and other applicable sections of this legislation to save lives and protect property and public health and safety, may provide assistance to owners of livestock or to State or local governments for the provision of facilities to which livestock may be removed and kept protected from the ravages of a disaster in a safe and sanitary manner and which provide for the well-being of such livestock.⁶⁴

It will be noted that the word "imminent" by which the President under Section 221 of PL 91-606 was to make his decision, (and which was also included in the Title III Section of S. 1840) was discarded in formulating Section 305. During the Senate hearings, the following colloquy took place between Governor Holton of Virginia and Senator Burdick on the choice of language in Section 305:

Senator Burdick. If the word "threatens" were substituted, as you suggest, for the word "imminent" in Title III of the bill, is it not true that there would still have to be an evaluation and judgment made by the President of whether or not emergency Federal services are necessary to save lives and property?

Governor Holton. Yes, sir. That is a problem of semantics there that I am not as strong in my feeling about as perhaps some of the staff people who helped prepare that paper.

I do think its very, very important that the policy statement should use language that conveys to the people, particularly at the time when the disaster occurs, the clear and distinct impression that we are going to help.⁶⁵

In drafting Section 305, the subcommittee may have felt that using the word "threatens" was more positive and preferred to weighing the "imminence" of an oncoming disaster.

Section 306, Cooperation of Federal Agencies in Rendering

Disaster Assistance

The changes made in the content and format of Section 306 and the three sections which follow it can best be understood by referring to Section 203 of PL 91-606, Cooperation of Federal Agencies in Rendering Emergency Assistance. In this single section of the former act, there was combined the basic content of what became 4 sections since PL 92-388: Section 306 with the above title; Section 307, Reimbursement; Section 308, Nonliability; and Section 309, Performance of Services. The principal difference - and a somewhat confusing one - is that under Section 203 of PL 91-606, all of the functions authorized to be performed were for "rendering Emergency Assistance" under a law that did not provide - as does PL 93-288 -

"emergency assistance" as a separate category.

In Section 306 the kinds of assistance authorized are described as much broader than in Section 203 and apply to both a major disaster and an emergency. The list of functions and activities listed in (a)(4) include many that were listed in the previous act but also many more. We shall not repeat them here; suffice to say that no important disaster functions are omitted, assuring thereby adequate legal authority for the President. These include specifically in (a)(1) utilizing or lending equipment, supplies and facilities to States and local government, and in (a)(2) distributing medicine, food, and supplies through the three relief organizations named in Section 303 "and other relief and disaster assistance organizations."

In subsection (b) there is stated, "Work performed under this section shall not preclude additional Federal assistance under any other section of this Act." The same caveat was in Section 203 except that it read, "Emergency work performed..." etc. This affirms for major disasters, as well as for emergency assistance, the underlying principle of PL 91-606 that all sections of the act are available for assistance and that the use of one type of assistance under one section shall not preclude the availability of other sections of the law.

Section 307, Reimbursement

This section is an exact restatement of Section 203(c) in PL 91-606 which provides that Federal agencies may be reimbursed for their expenditures in rendering assistance under the act, and that such funds shall be deposited to the credit of the appropriation available for such services. The provision of Section 203 (c) was a paraphrase of a similar statement in PL 81-875, Section 3, which act was replaced by PL 91-606.

Section 308, Non-Liability

Section 308 is a carryover of a similar section of PL 91-606, Section 203, but with an important difference. In a single declarative sentence it states:

The Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of the Act.

The difference is that in PL 91-606, the same language was used except that it referred to the "carrying out of the provision of this section," instead of "the provisions of the Act".

Since the purpose of the provision in the earlier law was also to protect the Government in the exercise (or failure to exercise) a discretionary function or duty, it is reasonable to suppose that the declaration of the Government's nonliability was to apply to the entire act, not only to the particular Section 203. It is probable that when Congress wrote Section 203(d), those who drafted PL 91-606 overlooked the fact that Section 252 which provided for assistance of permanent repair and replacement was not covered by the nonliability statement of Section 203. Hence, in re-writing the nonliability provision in Section 308, it was written to include all the provisions of the Act.

A brief explanation may be inserted here as to why Section 203(d) of PL 91-606 was written in that form. It will be noted that the title of Section 203 was "Cooperation of Federal Agencies in Rendering Emergency Assistance" and that its content dealt only with such types of emergency assistance as was listed therein, viz., debris removal and making repairs and replacement of public facilities as part of emergency assistance. It will be found that Section 203 (d) was an exact copy of a part of Section 3 of PL 81-875 which was worded as, "The Federal Government shall not be liable for any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Government in carrying out the provisions of this section". Of course, under PL 81-875, Federal assistance was limited to "emergency assistance, as was Section 203 of PL 91-606.

Section 309, Performance of Services

This section, too, was a transfer from the original act PL 81-875 to PL 91-606 and now to PL 93-288. It authorized and described the means by which Federal agencies could provide assistance, such as in subsection (a) "to accept and utilize the services or facilities of any State or local government," and (b) to fix the compensation of temporary personnel as may be necessary, and to employ experts and consultants without regard to the General Schedule pay rates, and to incur obligations by contract for such routine costs as hiring of services, materials, and supplies for transportation, communications, supervision, and administration.⁶⁶

Section 310, Use of Local Firms and Individuals

This section, a declaration of policy that local organizations, firms and individuals were to be given preference "to the extent feasible and practicable" in "the expenditure of Federal funds" was repeated without change from Section 204 of PL 91-606.

Section 311, Nondiscrimination in Disaster Assistance

When the first Federal disaster relief act of 1950 was enacted, it did not include a section assuring nondiscrimination in providing assistance. Largely as a result of reported discrimination in the Camille disaster, PL 91-606 contained such a section - Section 209.

Section 311 of the 1974 act repeated the contents of Section 209 word for word except for two changes: (1) the name of the President was substituted for that of the Director (of OEP) since all authority under the act was delegated only to the President, and (2) where Section 209 in paragraph (b) made a point of assuring against discrimination by the relief organization referred to in Section 207, the references in the new act were to Sections 402 and 404 - viz. repair of damaged facilities and temporary housing. Presumably, the Committee felt that pointing a finger at the Red Cross was no longer needed, and directed its focus to these two important sections of the law.

Section 311 gave the President authority to issue and alter such regulations as may be necessary to insure that the distribution of supplies and the processing of applications for relief and assistance "...shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status". Particular note should be taken of the fact that Section 311 forbids discrimination on grounds also of age, nationality, and economic status, which are not included in the Civil Rights Act of 1964.

Section 312, Use and Coordination of Relief Organizations

This section is mainly a repeat of a similar section in PL 91-606, Section 207, where for the first time the Federal legislation took statutory notice of the role of the disaster relief organizations other than the American National Red Cross.⁶⁷ The section gave recognition for disaster services of two of the relief organizations which had also been active in the Camille disaster, and further recognized the need of being better coordinated by the Federal Coordinating Officer.

Section 312 provided authority that the President may utilize, with their consent, the personnel and facilities of the American National Red Cross, the Salvation Army, the Mennonite Disaster Service and "other relief and disaster assistance organizations" in the distribution of medicine, food, supplies, and other items. Subsection (b) authorized the President to enter into agreements with these and "other relief or disaster assistance organizations," which agree to work under the coordination of the FCO.⁶⁸ It stated further that any such agreement shall include provisions assuring compliance with regulations prohibiting duplication of benefits and guaranteeing nondiscrimination, or other regulations as the President may require.

Section 313, Priority to Certain Applications for Public Facility and Public Housing Assistance

This section, which states a policy that priority shall be given in the processing of applications from public bodies situated in major disaster areas for public facility and public housing assistance, is a continuation of a provision which began in the 1966 act, PL 89-769 (Section 8) and was also included as Section 253 of PL 91-606. Section 313 names eight previous acts under which such applications can be made - four Housing Acts of 1955, 1937, 1954 and 1965, a Consolidated Farmers Home Administration Act, a Public Works and Economic Development Act, the Appalachian Regional Development Act, and the Federal Water Pollution Control Act. In subsection (b) it further provides that such priority shall also be given to discretionary funds or funds not allocated by the Secretaries of Housing and Urban Development and Commerce for projects designated by the Recovery Planning Council in Title V of this act.⁶⁹

Section 314, Insurance

Section 314 sets forth for the first time terms and procedures for requiring insurance for disaster assistance. The section of the law had gone through an interesting metamorphosis before the Conference Committee arrived at this final compromise. The idea of requiring insurance as a condition of obtaining Federal assistance originated in Section 211 of S. 1840 which made the purchase of insurance mandatory for both individuals and for public bodies, stating that "An applicant ...shall comply with regulations prescribed by the President to assure that, with respect to any property to be replaced, restored, or constructed with the assistance, such types and extent of insurance will be obtained and maintained as may be reasonably available, adequate and necessary to protect

against future loss to the property." It provided further that "No applicant ...shall receive such assistance for any property or part thereof for which he has previously received assistance ...unless all insurance required...has been obtained and maintained with respect to such property."

When S. 3062 was introduced on February 26, it included the above provision intact. An additional paragraph was added (c) which provided that a State or local government "may elect to act as self-insuror with respect to any or all facilities belonging to it," and which precluded assistance under the act for such self-insured facilities. In defending Section 314, Senator Burdick stated:

The increased Federal costs of providing disaster assistance in recent years, especially to the private sector, has focussed attention on the need for more extensive insurance coverage against losses caused by natural hazards...it is not unreasonable to expect the ordinary property owner to purchase basic protection against such losses through any insurance reasonably available to him...unless such insurance is secured, no applicant for Federal assistance can receive aid for any damage to his property in future major disasters.⁷⁰

Section 314 posed several crucial issues: As stated, it required everyone to obtain and maintain insurance - individuals as well as State and local governments - "as reasonably available, adequate and necessary." Was Congress ready for this giant leap, and was it entirely feasible? The other question was the provision for self-insurance by both the States and local government, and the terms by which self-insurance could be provided. It will presently be evident that Congress was not prepared to make the purchase of insurance compulsory on a universal basis, and that the provision was made applicable only to certain sections of the act.⁷¹ In revising subsection (c), the Committee heeded the arguments presented by the FDAA Administrator that self-insurance should be available only to the States and that "self-insurance for local governments would be a delusion".⁷² Accordingly, in accepting a policy of self-insurance, the Committee made it provisional for the State government only, but on terms more loose than recommended by the FDAA Administrator, leaving some latitude for the State insurance commissioner to determine types and extent of insurance that is reasonable, and to devise a plan of State self-insurance that would be subject to the President's approval.

In its enacted form, Section 314 had undergone some important changes when compared with its original proposals in S. 3062. Paragraph (a) provides for its application only to Sections 402 or 419 of the act and to the Public Works and Economic Development Act of 1965, and only for the repair or replacement of public facilities.⁷³ It then went on to state the original policy of S. 3062 that applicants for assistance "shall comply with regulations prescribed by the President to assure that, with respect to any property to be replaced, restored, repaired or constructed with such assistance, such types and extent of insurance will be obtained and maintained as may be available, adequate, and necessary to protect against future loss to such property." The conferees were apparently concerned that in administering the insurance provision the President might impose too severe requirements, and in subparagraph (a) (2) it added that in his determination of the criteria of availability, adequacy and necessity, "the President shall not require greater types and extent of insurance than are certified to him as reasonable by the appropriate State insurance commissioner responsible for regulation of such insurance." The Conference Committee further explained its intent, as "...not...to permit the President to prescribe regulations which would apply restrictions on a retroactive basis to property damage which was covered by legislation enacted before the effective date of this legislation".⁷⁴ Paragraph (b) repeats the provision in S. 3062 that "No applicant for assistance (under this section)...shall receive such assistance for any property or part thereof for which he has previously received assistance under this act unless all insurance required pursuant to this section has been obtained and maintained with respect to such property."⁷⁵ The last paragraph (c) relates to self-insurance under which a State "may elect to act as a self-insurer with respect to any or all of the facilities belonging to it," but must so declare its intent in writing at the time of applying for assistance, "accompanied by a plan for self-insurance which is satisfactory to the President." To this was added that, "No such self-insuror shall receive assistance under such sections for any property or part thereof for which it has previously received assistance under this Act, to the extent that insurance for such property or part thereof would have been reasonably available."

Section 315, Duplication of Benefits

This provision safeguarding the Government's interest against paying for a duplication of benefits originated in the 1966 act, as Section 10 of PL 89-769. It provided simply that the head of each Federal agency or department shall the Director

of OEP in consultation with "...assure that no...person, concern or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other such program." In drafting the duplication of benefits section in PL 91-606, its Section 208 was enlarged. It repeated the contents of PL 86-769 in its first paragraph (a) In paragraph (b) it provided that compensation received from insurance was not to be duplicated by financial assistance from the Government, but added that partial compensation for a loss "shall not preclude additional Federal assistance for any part of such a loss not compensated otherwise" Paragraph (c) provided that whenever assistance has been received for the same loss from another source or exceeded the amount of the loss, the excess amount was to be paid back to the Treasury "sufficient to reimburse the Federal Government for that part" that was determined to be excessive.

Section 315 copied the identical language of Section 208 but substituted for the authority of the Director of OEP in PL 91-606 the name of the President.

Section 316, Reviews and Reports

Section 316 provides that the President "shall conduct annual reviews of the activities of Federal agencies and State and local governments providing disaster preparedness and assistance in order to assure maximum coordination and effectiveness of such programs, and shall from time to time report thereon to Congress."

It is noted that Section 316 is in large part a duplication of a similar authority already included in Section 201 (a)(4) and (a)(5) of PL 91-606. Section 316 was one of the sections in Senator Burdick's original S. 3062 which survived without change. Much if its language is the same as Section 203(g) of PL 91-606 which spoke of the President conducting "periodic reviews (at least annually)" of Federal and State agencies" in order to assure maximum coordination of such programs." The section in PL 91-606 was, in turn, an adaptation of a similar Section 12 of PL 89-769 which determined that the President acting through the Office of Emergency Preparedness "...shall plan and coordinate all Federal programs...and shall conduct periodic reviews (at least annually) of the activities of State and Federal departments to assure maximum coordination of such programs."

Section 317, Criminal and Civil Penalties

Until the enactment of this section in PL 93-288, there had existed no provision in the legislation to protect the

During the month of March when S. 3062 was being considered in the Senate committee's hearings, the proposal for the wage, rent and price controls was disparaged as impractical. Thomas Dunne, FDA Administrator recommended deleting the

In the legislative evolution of PL 93-288, Section 318 went through a strange transformation. When Senator Burdick first introduced S. 3062, this numbered section carried the title of "Emergency Wage, Rent and Price Controls". It provided authority to the President, upon a request of the Governor, to impose "such controls on maximum allowable wages, rents and prices for goods and services...to predistaster levels" and if in his judgment he finds necessary to relieve actual or threatened scarcities, and to continue for the period for which the major disaster was declared.

Section 318, Availability of Materials

In its enacted form, Section 317 provides: In (a) that any individual who fraudulently or willfully misstates any fact in connection with a request for assistance shall be fined not more than \$10,000 or imprisoned for not more than one year or both for each violation. In paragraph (b) an individual who knowingly violates any order or regulation under the Act shall be subject to a civil penalty of not more than \$5,000 for each violation. The last paragraph (c) states that whoever knowingly misapplies the proceeds of a loan or other cash benefit obtained under any section of the Act shall be subject to a fine in an amount equal to one and one-half times the original principal amount of the loan or cash benefit.

Government against fraud, misapplication of funds, or willful violation of its regulations. The provision in Section 315 against duplication of benefits was inferentially not an adequate solution. The provision of criminal and civil penalties had its origin in Section 213 of S. 1840 from which Senator Burdick copied it as Section 317 in S. 3062. An important single word change was added to the bill when it was passed by the Senate on April 10, viz. in paragraph (a) there was added the word "fraudulently" to read "fraudulently or willfully misstates any fact". Paragraph (b) was unchanged in the final enactment, but a significant change was made in paragraph (c) in which under, S. 3062 a wrongful misapplication of funds was changed from an act civilly liable to attest to the Conference Committee's concern for the need of an effective deterrence against a deliberate misuse of Federal funds.

action as "well intentioned but unlikely to produce useful results".⁷⁷ In his opinion such controls could be more effectively imposed and enforced by the State and local governments "so long as they do not conflict with, or are not preempted by, Federal controls". He thought there were "other appropriate measures by Federal, State, and local authorities which have proved adequate in past major disasters to cope with emergency inflationary trends."⁷⁸

It was at this point that Senator Walter Huddleston of Kentucky proposed a suggestion which he offered as an amendment to S. 3062 as "Proposed New Section (Perhaps after Current Section 318)".⁷⁹ The April 3-4 tornadoes had ravaged Kentucky and the contiguous States and had created a condition of scarcity in the supply of construction materials. Huddleston's suggested remedy was not to establish emergency price controls but to find ways and means of augmenting the supply. His letter suggested some of the language and his ideas were incorporated into S. 3062 as it was passed by the Senate on April 10, as Section 318, Availability of Materials. However, in that form, it was limited to consideration of construction materials only for "replacement of housing, farming operations, and business enterprises." When enacted as part of PL 93-288, Section 318's scope was expanded to include construction materials for public facilities repairs and replacements.⁸⁰ It provided that at the request of the Governor of the affected State, the President was authorized to provide for a survey of construction materials needed in the major disaster area, and to "take an appropriate action to assure the availability and fair distribution... including, where possible, the allocation of such materials for a period of not more than one hundred and eighty days after such major disaster". The President was instructed to work with and through those companies which traditionally supply construction materials in the affected area.

Title IV - Federal Disaster Assistance Programs

Except for those programs specifically targeted for long-range economic recovery under Title V, all of the Federal disaster assistance programs are included in this title, extending from Sections 401 through 419. If the sections are divided into the three classifications used in this history, four are classified as directive/administrative, six are for public assistance, and nine are for individual assistance. These sections will be analyzed in the following order.

Directive/Administrative Sections

- 401. Federal Facilities
- 405. Protection of Environment
- 406. Minimum Standards for Public and Private Structures
- 415. Emergency Communications

Public Assistance Sections

- 402. Repair and Restoration of Damaged Facilities
- 403. Debris Removal
- 414. Community Disaster Loans
- 416. Emergency Public Transportation
- 417. Fire Suppression Grants
- 419. In Lieu Contributions

Individual Assistance Sections

- 404. Temporary Housing Assistance
- 407. Unemployment Assistance
- 408. Individual and Family Grant Programs
- 409. Food Coupons and Distribution
- 410. Food Commodities
- 411. Relocation Assistance
- 412. Legal Services
- 413. Crisis Counseling Assistance and Training
- 418. Timber Sales and Contracts

Directive/Administrative Sections

Section 401, Federal Facilities

This section empowers the President to authorize any Federal agency to repair, restore or replace any Federal facility damaged or destroyed in a major disaster if he determines such repair or replacement cannot be reasonably deferred without waiting for Congressional funding approval, and states further in (b) that in such instances, a lack or insufficiency of funds may be remedied by the transfer of funds appropriate to that agency for another purpose when in accordance with law. The last paragraph (c) of the section states that "In implementing this section, Federal agencies shall evaluate the natural hazards to which these facilities are exposed and shall take appropriate action to mitigate such hazards, including safe land-use and construction practices, in accordance with standards prescribed by the President."

Section 401 is an exact copy of Section 401 of S. 3062 which, in turn, was copied from Section 802 of S. 1840. The language of the first two paragraphs is identical to the Federal Facilities Section 251 of PL 91-606. That, in turn, was a restatement of a similar section in PL 81-875, Section 6, which authorized the President to transfer funds made available under the act as he deems warranted. The only important change in the section was paragraph (c) in which each Federal agency is committed to taking appropriate action for hazard mitigation.

Section 405, Protection of Environment

Section 405 is a new section added to the disaster relief legislation and is a policy interpretation of the National Environmental Policy Act of 1969 (NEPA), as it affects the new act.

Section 405 states that "No action or assistance provided pursuant" to certain listed sections of the act "... that has the effect of restoring facilities substantially as they existed prior to the disaster shall be deemed a major Federal action significantly affecting the quality of human environment within the meaning of the National Environmental Policy Act of 1969" (emphasis added).

The sections listed are: Section 305, Emergency Assistance; Section 306, Cooperation of Federal Agencies in Rendering Disaster Assistance; Section 403, Debris Removal; Section 402, Repair and Restoration of Damaged Facilities; and Section 419, In Lieu Contributions.

It is clear that the first three sections above - Sections 305, 306, and 403, all of which provide emergency assistance, are more or less automatically exempted since, by definition of their functions, they do not result in any permanent alterations of the environment. In the case of Sections 402 and 419, there is a greater likelihood that the restoration or replacement of a facility may have an effect other than "restoring facilities substantially as they existed before the disaster." Section 405 states that if the restoration or replacement does not have such an effect, the actions taken under Sections 402 and 419 are also exempted as "significantly affecting the quality of the human environment" within the meaning of NEPA.

The rest of Section 405 then goes on to state, "Nothing in this section shall alter or affect the applicability of the National Environmental Policy Act of 1969 to other Federal actions taken under this Act or under any other provision of law." Stated differently, the exemption applies only to the

named sections of the act wherein they qualify (as in Sections 402 and 419), and all the other sections of the act are to adhere to the policies and procedures of NEPA.

Section 406, Minimum Standards for Public and Private Structures

A section similar in content and intent to Section 406 had been included in the previous act, PL 91-606, as Section 243⁸¹ but had been in effect eviscerated, probably through a typing error, by stating that "No loan or grant made by any relief organization (our emphasis) operating under the supervision of the Director" for the repair and restoration "of any residential structure located in a major disaster area shall be made unless such structure will be repaired, restored, reconstructed, or replaced ...in accordance with applicable standards of safety, decency and sanitation and in conformity with applicable building codes and specification." Since the only "relief organizations" which perform the function of repairing or restoring homes are the American Red Cross and Mennonite Disaster Service, and both on a very limited scale, Section 243 was without effect.

The scope and meaning of Section 406 was expanded considerably over Section 243 of the previous act. Not only was its scope enlarged beyond residential structures to include all types of public and private structures, but it was provided with a methodology and procedures to assure, to the degree it was enforced, some measure of hazard mitigation through "safe land-use and construction practices."

Section 406 had its origin in S. 1840 as Section 801 of the same title from which it was copied as a part of S. 3062. In introducing S. 3062, Senator Burdick indicated the deficiencies in the existing law with respect to replacing damaged public facilities in hazardous locations where disaster damage had been repeated. The law was not sufficiently explicit, and he believed Section 406 might help prevent such future damage. He stated:

Ever since the enactment of the Disaster Relief Act of 1970, it has been assumed (emphasis added) that Federal funds would not be made available for replacement of public facilities in recognized dangerous areas, clearly indicating that the intent was not to force reconstruction of severely damaged structures in the same location.⁸²

Section 406 as adopted in PL 93-288 is identical to the section in S. 3062 except for a single change inserted by the Conference Committee at the end of the section, as will be noted. The application of the section is far

more comprehensive than "residential structures" to which Section 243 in PL 91-606 applied. It applies to any and all types of repairs and construction for which Federal loans or grants are used, and provides for a policy and a procedure by which it was intended that hazards would be mitigated.

It stated that "As a condition of any disaster loan or grant made under the provisions of this act, the recipient shall agree that any repair or construction to be financed therewith shall be in accordance with applicable standards of safety, decency and sanitation, and in conformity with applicable codes, specifications, and standards, and shall furnish such evidence of compliance with this section as may be required by regulations." It then went on to state that "the State or local government shall agree that the natural hazards of the areas in which the proceeds of the grants or loans are to be used shall be evaluated and appropriate action shall be taken to mitigate such hazards, including standards prescribed or approved by the President after adequate consultations with the appropriate elected officials or general purpose local governments, and the State shall furnish such evidence of compliance with this section as may be required by regulation." The only change made to the provision in S. 3062 was the addition of the words underscored above, viz. "or approved," for which the conference report explained, "The conference substitute is the same as the Senate bill, except that the conference substitute gives the President authority to approve standards prescribed by the States, local governments, or other sources, in addition to his authority to prescribe standards."⁸³

Section 415, Emergency Communications

This section, which appeared in PL 91-606 as Section 222 is repeated without change (except in all sections, naming the President in lieu of the Director of OEP), authorizes the President to establish emergency communications in any declared disaster area, and to make them available to State and local officials.

Public Assistance Sections

The sections in PL 93-288 that provide public assistance are the fewest in number - only four: Sections 402, 403, 414 and 419. Of these, Section 402, Repair and Restoration of Damaged Facilities, is the most important and consumes by far the largest amount of Federal funds of any single section of the act. Three of the sections were greatly altered by comparison with the same subject matter in PL 91-606, viz.,

402, 414 and 419. But, however significant in terms of detailed changes for each section, taken together, they represent a continued expansion of Federal assistance for these activities.

Section 402, Repair and Restoration of Damaged Facilities

To provide the reader with necessary background to Section 402, it is advisable to refer to the earlier legislation to indicate the thread of continuity which led to the changes effected here. It has been observed in earlier chapters that only a few years before PL 93-288 was enacted, almost the whole Federal disaster relief program consisted of repair and restoration of damaged public facilities - with only marginal attention given to the other programs. This history has shown that the impetus that produced the first disaster relief act, PL 81-875 in 1950, came from the need to repair and restore farm roads -- just one type of public facility repair. Under its formula, the Federal Government paid for "emergency repairs and temporary replacements" only. Then, as a result of precedents that had been established by special acts for disasters in certain States, Congress, in its act of 1966, PL 89-769, expanded the authority for assistance to damaged public facilities. Contributions not to exceed 50 percent of eligible costs could be made for the repair, restoration, or reconstruction of designated types of public facilities.

Three years later, in 1969, as a result of the Camille disaster, the 50 percent Federal contributions were extended to include roads and bridges not on the Federal aid system and for unfinished public facilities damaged while under construction. The act of 1970, in Section 252 of PL 91-606, further expanded Federal payments to 100 percent of the costs of repair or replacement for all types of public facilities but excluded those used exclusively for recreational purposes. In the aftermath of the Agnes disaster, the Administration had proposed to turn the clock back with its provision in S. 1840 of paying only 75 percent of the repair/replacement cost; but Congress had rejected that. The Disaster Relief Subcommittee had been studying the matter in its hearings for the past year and many must have wondered what it would propose in the place of Section 252.

Section 402 of S. 3062 as presented by Senator Burdick was comprehensive in bringing together into a single section almost every aspect of repair and restoration of damaged facilities. The following changes were made: (1) provision for repair or replacement of facilities of nonprofit organizations; (2) a single sentence added to paragraph (f) that

would specify in clear terms the basis of the Government's payment as applied to "flexible funding;" and (3) a new approach for processing project applications of smaller amounts that was incorporated into a separate Section 419, In-Lieu Contributions.

Section 402 is composed of six paragraphs, (a) through (f):

Paragraph (a) is a blanket authorization to the President to "make contributions to State or local governments to help repair, restore, reconstruct, or replace public facilities belonging to such State or local governments which were damaged or destroyed by a major disaster." This paragraph applies across the board to the paragraphs which follow. The language in Section 252 of the previous act has been changed from "to repair," etc. "to help repair," etc. inasmuch as in one of the paragraphs (f), less than 100 percent of the cost is paid by the Federal Government.

Paragraph (b) represents an amalgamation into this one paragraph of the provisions in the existing law pertaining to Federal assistance to nonprofit organizations for repair or replacement of their damaged facilities, plus some new ones. PL 92-209, passed in December 1971, had amended PL 91-606 by adding Section 255 which provided the same 100 percent payment for repair or restoration of nonprofit private medical care facilities. Within a year, in August 1972, the same provision was applied to non-profit private educational institutions of all grade levels (mainly church schools) following the Agnes disaster.⁸⁴ Having added certain types of nonprofit organizations for repairs or replacement of their damaged facilities, it was fairly predictable that the list would soon be extended. Paragraph (b) was changed to read, authorizing the President "to make grants to help repair, restore, reconstruct or replace private nonprofit educational, utility, emergency, medical, and custodial care facilities, including those for the aged and disabled, and facilities on Indian reservations as defined by the President, which were damaged or destroyed by a major disaster."

The expansion of private nonprofit facilities for the aged and disabled is fully consistent with the previously existing provision for private care medical facilities, and no further explanation is needed for that extension. The addition of the other two, "utility," and "facilities on

Indian reservations" needs explanation. As the result of the April 3-4 tornadoes, considerable damage had resulted to many of the electric utility and telephone co-ops, and particularly to the REA utilities. Although Section 402 in S. 3062, when it was introduced on February 26, already included utilities and Indian reservations, Members of Congress with REA interests wanted assurance that the REAs were clearly understood as covered by this legislation. Senator Baker of Tennessee put the question to Senators Burdick and

Domenici, the managers of the bill, and was fully assured that the utility and telephone co-ops were included.⁸⁵

The reasons for including in this private nonprofit facilities paragraph, the "facilities on Indian reservations" is less clear - unless it was intended to refer to private nonprofit facilities on Indian reservations. Under Section 102 (6) "any Indian tribe or authorized tribal organization" was denoted as a "local government," and as such was fully eligible and qualified to obtain assistance under Section 402 as a local government. Presumably, the framers of the legislation wanted to make sure that Indian reservations would henceforth have no trouble in validating their claims.⁸⁶

Paragraph (c) is concerned with public facilities eligible under Section 402 which were damaged or destroyed when unfinished or "in the process of construction." Under the two previous acts - Section 9 of PL 89-769 of 1966, and Section 252 (b) of PL 91-606 -- Congress had authorized a payment of 50 percent of the cost of their restoration to their predisaster condition. Paragraph (c) increased the Federal Government's grant as "based on the net costs of restoring such facilities substantially to their predisaster condition," i.e., 100 percent.

Paragraph (d) lists those facilities and projects eligible under the definition of a "public facility" as including any "publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility, any non-Federal-aid street, road, or highway, any other public building, structure, or system including those used for educational or recreational purposes, and any park." All of the above, except for those underlined, were included under the definition of a public facility in Section 252 of PL 91-606, which specifically excluded facilities "used exclusively for recreation purposes." Thus, it is noted that PL 93-288 enlarged to a considerable degree the types of facilities eligible for repair and restoration assistance. Senator Burdick in presenting S. 3062 offered the following rationale for the admission of recreational facilities for eligibility.

The 1970 Act, expressly, excluded from the disaster grant program any facilities used solely for recreational purposes. Many local officials and other witnesses have requested the removal of this restriction, pointing out that the need for wholesome activities and diversion are especially important in communities struggling to regain some semblance of normalcy following a catastrophe. In response to those who assure that such funds should not be spent on golf courses, football or baseball fields, tennis courts, parks or picnic areas, the answer is that such outdoor facilities usually suffer little or no damage in major disasters; to the contrary, most of the actual loss is that inflicted on buildings, such as community halls, theaters or gymnasiums, that are essential not only for recreation but also for general assemblages and other community affairs. There seems to be no valid reason in authorizing disaster assistance for treating this type structure differently from any other public facility. Private recreational facilities, of course, would not be made eligible by the bill for such aid.⁸⁷

When passed by the Senate on April 10, Section 402 (d) had read only as "including these used for educational or recreational purposes." The Conference Committee had added "and any park," and in its report, further described the parameters of the assistance: "The definition of the term 'public facility' has been slightly revised to assure that a park will for the purpose of this section be a public facility. Thus, for the purpose of this section, the repair, restoration, reconstruction and replacement of a public facility will, in the case of a park, include restoration of natural features including trees and other vegetation to the extent practicable."⁸⁸

Paragraph (e) states that "The Federal contribution for grants made under this section shall not exceed 100 percentum of the net cost of repairing, restoring, reconstructing, or replacing any such facility on the basis of the design of such facility as it existed immediately prior to such disaster and in conformity with current applicable codes, specifications and standards." This statement is identical with that in Section 252 (a) of PL 91-606 except that the word current was added.⁸⁹

Section 402 (f) and Section 419, In-Lieu Contribution

The discussion that follows comprehends both paragraph (f) of Section 402 and Section 419, In-Lieu Contribution, which are closely interrelated in concept and origin. Both of these

are new additions in the legislation, and were conceived as a partial solution to problems that had been causing increasing discontent with the procedures used under PL 91-606. Part of the dissatisfaction was with the procedures of what became known as categorical grants. When a community or State suffered damage to a public facility, under the procedures established by OEP and later followed by FDAA, it presented to that agency a project application in which the type of damage was classified into one of nine different categories (i.e., debris removal, road and bridge repair, etc.), when approved by the FDAA, it became known as a "categorical grant." Under the terms of the grant, in order to obtain reimbursement, it was imperative that the applicant's funds must be used for that particular facility and no other, but also that its repairs or replacement must be within the strict descriptive terms of the "damage survey," the basis of determining the amount of the grant. The only discretion allowed was that the applicant could make the choice of enlarging or improving that facility in which case FDAA could approve a "grant-in-lieu" contribution. The applicant then could receive a cash grant for the amount of the damage survey estimate to be applied toward building an expanded or improved facility. But in every instance, the money had to be applied to the repair or improvement or replacement of the same facility without regard to whether the community's best interests were served by that facility or would be better served by using the same expenditure for another purpose. During the Senate hearings, some suggestions had been offered by local officials that the existing system was too rigid and ought to be changed.⁹⁰ Other problems surfaced in the Senate hearings, some of which had doubtless been discussed with FDAA officials in drafting S. 3062. Thomas Dunne, FDAA Administrator, presented his views during the hearings and argued for the need for reducing the time for processing each application and for eliminating some of the existing procedures and red tape necessary to assure accountability. He urged a simple system of block grants similar to the 75 percent - 25 percent system proposed by S. 1840, though he appeared amenable to some other arrangement. One of his comments was, "After we get finished with project administration 2 or 2 1/2 years after a disaster, the paperwork that has been amassed by Federal, State, and local governments is incredible."⁹¹

To ameliorate the conditions described above, two expedients were developed. The first of these is described in paragraph (f) of Section 402. The concept had already been expressed in S. 3062 when it was introduced on February 26: "If a

State or local government determines that public welfare would not be best served by repairing...or replacing particular publicly owned or controlled facilities...in lieu of the above grant it may elect to receive a contribution equal to 90 percent of the total estimated cost of restoring all damaged public facilities within its jurisdiction." The language used to express this idea of flexible funding was altered when the Senate passed S. 3062, and was changed further by the Conference Committee's addition of the sentence beginning, "The cost of repairing..." etc. which describes the basis of the Federal estimate and which uses the same formula for determining cost as in paragraph (e). The principal motive of the new provision was to extend to each applicant a greater freedom of choice of what the money was to be used for, and to spend it upon public projects deemed to have a higher priority.

Section 419, In-Lieu Contribution, was addressed to meet another problem in handling project applications and appeared in a somewhat different form as paragraph (g) of S. 3062 when the Senate passed the bill on April 10. It's placement in PL 93-288 as a separate Section 419 may be explained as a means of preventing confusion with the flexible funding provision in Section 402 (f) by assigning to it a separate section and a different name. Its purpose was to devise a way of avoiding having to treat project applications for small grants with the same detailed procedures of paperwork, inspections, and audits as the large grants. In support of the proposed procedure, Mr. Dunne presented statistical evidence that showed that a small percentage of the total project expenditures caused a disproportionate amount of the paperwork. Between 1971 and 1974, there had been 2219 project applications under \$25,000 which, while 72.8 percent of the total number, involved only 10.3 percent of the expenditures.⁹²

Paragraph (g) of S. 3062 had proposed that on an application of State and local governments for the repair or restoration of public facilities in which the total estimated cost is less than \$25,000, the President was authorized to make a contribution based on 100 percent of the cost, and that the applicant could expend its grant on repairing (emphasis added) selected damaged facilities or construct new facilities to meet its needs in the disaster affected area. The record is not clear as to who developed the language of the new Section 419 or just when it was formulated. The Conference Report refers to the FDAA statistics on small project grants, but for reasons

unexplained makes no reference to the detailed language of Section 419. It is clear from a reading of paragraph (g) that this was no solution since it confined the expenditures under \$25,000 only to public facility repair whereas the problem was on small applications per se from whatever part or all parts of the act. Section 419 was then inserted separately and re-stated, to authorize "the President to make a contribution under the provisions of this section in lieu of any contribution to such State or local government (emphasis added) under Section 306, 402 or 403," when the Federal estimate of the total cost under these sections (402, for repair and restoration of public facilities, 403 for debris removal, and 306, for emergency assistance) is less than \$25,000. Although the act did not so state, it was interpreted to mean that when an applicant's cost exceeded \$25,000 (by supplements to the application), the grant reverted to the categorical type under Section 402.

Section 403, Debris Removal

In including a section to provide for debris removal in the new act, no change was made from the previous Section 224 of PL 91-606. The first paragraph (a) authorized the President "whenever he determines it to be in the public interest" to remove "debris and wreckage resulting from a major disaster from publicly or privately owned lands and waters" by either utilizing the Federal agencies and departments or by making grants to the State or local government. The second paragraph provided safeguards in stating that no authority under the section was to be exercised "unless the affected State or local government shall first arrange an unconditional authorization for removal of such debris or wreckage" and "shall agree to indemnify the Federal Government against any claim for such removal."

From the viewpoint of historical interest, it may be noted that debris removal was authorized by Section 3 of the first disaster relief act, PL 81-875, in which the President was authorized to provide assistance "... (d) by performing on public or private lands protective and other work essential for the preservation of life and property, clearing debris and wreckage."

As a result of the Hurricane Camille disaster, Congress included a separate section to provide for debris removal in Section 14 of PL 91-79 in which several changes are noted: (a) The purpose of debris removal was expanded beyond "preservation of life and property" to include "in the public interest" a larger base for the President's discretion should he choose to exercise it; (b) it specifically included privately and publicly owned waters, in part a response to a

situation that occurred after the Palm Sunday tornadoes in 1964 in which there was in question the legal authority to remove debris from a lake; (c) it provided a procedure for direct Federal reimbursement to private individuals to remove debris and wreckage from their own lands - a procedure dropped when reframing Section 224 of PL 91-606.

Finally, it is noted that the Conference Committee again reminded the Department of Agriculture of its duty to clear debris from farmlands. The conference report appended, "It should be noted that it is the intention of the conferees that, for the purpose of Section 403, privately owned lands shall be considered to include farms."⁹³

Section 414, Community Disaster Loans

Section 414, Community Disaster Loans, was a replacement of Section 241, Community Disaster Grants, of PL 91-606. When PL 91-606 was being framed, that section was regarded as essential to providing a cash flow to communities stricken by disasters as an offset to their reduced tax base. Under PL 91-606, a total of ten communities had applied for the community disaster grants and only three had received them at a total cost of slightly over \$100,000.⁹⁴ The hearings reflected the need of amending Section 241 to make cash flow to the communities more accessible.

Section 241 had authorized the making of grants to any local government which as a result of a major disaster suffered a substantial loss of property tax revenue (both real and personal) for a three-year period (the year in which the disaster occurred and the two years following) to make up the difference between its normal revenues (assuming neither a reduction of the tax rates nor of the tax assessment valuation). The determination of what constituted a "substantial loss" was left to OEP which set it at 25 percent, the percentage used in the original Senate bill which had authorized loans instead of grants, (the House bill provided for grants).

When Senator Burdick introduced S. 3062, Section 414 authorized disaster grants for any local government "which has suffered a substantial loss of tax and other revenue" and "has demonstrated a need for financial assistance in order to perform its governmental functions," in which case it could receive a grant of not over 10 percent of its annual operating budget for the fiscal year in which the disaster occurred. The 10 percent figure was probably taken from the S. 1840 bill which provided for disaster loans of that amount.

As Section 414 was revised by the Senate, the type of assistance was changed from grants to loans, and the loan could be made to any local government which "may suffer a substantial loss of tax and other revenues as a result of a major disaster, and has demonstrated a need for financial assistance in order to perform its governmental functions." The amount of the loan was to be based on need, and could not exceed 25 percent of the community's annual operating budget for the fiscal year in which the major disaster occurred. If the revenues of the local government for the three years following the disaster are insufficient to "meet the operating budget... including additional disaster-related expenses of a municipal operation character," the President was authorized to cancel repayment of all or any part of the loan. The bill carried the proviso that loans made under this section would not "otherwise affect any grant or other assistance under this Act." It also amended the Fiscal Assistance Act of 1972 by directing the Secretary of HUD to disregard any change of financial data for a period of 60 months if the change affected a community's regular entitlement under that act.

Two further changes were made by the Conference Committee's report on May 13. The provision authorizing the President to cancel all or part of the loan was changed to make the cancellation mandatory if the community's revenues were not sufficient during the three fiscal years following the disaster. The second change was stated by the report, "It is the intention of the conferees that the term 'revenues,' when used in Section 414, shall include utility revenues."⁹⁵

Section 416, Emergency Public Transportation

This section, too, appeared in PL 91-606 for the first time (Section 223) and was reissued without change. It authorizes the President "to provide temporary public transportation to meet emergency needs in a major disaster area "...to governmental offices, supply centers, stores, post offices, schools, major employment centers and such other places as may be necessary in order to enable the community to resume its normal pattern of life as soon as possible."

Section 417, Fire Suppression Grants

Federal assistance for fire suppression grants originated in the act of 1969, PL 91-79, as Section 13 and was continued without change as Section 255 in PL 91-606 and as Section 417 in the new act. It gave authority to the President "to provide assistance, including grants, to any State for the suppression of any fire on publicly or privately owned forest or grassland which threatens such destruction as would constitute a major disaster."

Individual Assistance Sections

Section 404, Temporary Housing Assistance

The topic of temporary housing during the Senate hearings, and especially during the Agnes hearings, was given as much attention as any other single subject. American family life is so inseparably associated with the home that the loss of the family's dwelling place strikes with greater force than probably any other, (excepting death and personal injury, of course) to leave the family unit stranded from its traditional moorings. Making provision for temporary housing in terms of our accepted standards and styles of living is indeed one of the most difficult of the disaster relief tasks.

The traditional "roof over one's head" no longer suffices to resolve the multiplicity of concerns that disaster relief must mount: sometimes sheer numbers (as in the Agnes disaster where thousands of families had need to be housed in a short time span before the cold weather season); consideration of topography (as in the mountainous areas where good housing sites are scarce); water, sewer, and electrical connections; commuting distance from places of employment, schools, etc; and not least, cost considerations to the Government. The magnitude of some of the temporary housing operations may be judged from the fact that the Camille disaster required housing 5,000 families; the Rapid City, South Dakota, disaster, 1,290 families; and in the Agnes disaster in Pennsylvania alone, over 20,000 families, all of which was accomplished within 4 months of the President's declaration.⁹⁶ For each of these families, a housing solution had to be tailored to the individual family's needs, - the size and income of the family, suitable terrain with utility connections, and within daily travelling distance to and from place of employment, schools, etc. As many disaster officials can attest, it's often a lot easier to deal with inert materials, such as road or building repairs, than to solve the stresses of disasters as they impact on the individual. The Senate hearings acted as a forum in which many of the victims of the major disasters had an opportunity to voice their complaints. But in the end, when S. 3062 emerged from the Subcommittee, few changes were made in the housing section of the act.

Before presenting how the modifications of Section 404 came into being, it is advisable to trace the legal origins of the section. The first disaster relief act of 1950, PL 81-875, focussed exclusively on emergency assistance and the repair and temporary replacement of public facilities, and included

no provision for temporary housing. Less than a year after passage, Congress amended PL 81-875 by enacting on August 2, 1951, PL 82-107 which provided for "temporary housing or other emergency shelter for families, who, as a result of such major disaster, require temporary housing or other emergency shelter."

As this study observed in Chapter II, because the administering agencies (FCDA, OCDM and OEP) interpreted their charge as being mainly limited to repairing public facilities, very little disaster housing assistance was provided. When the Camille disaster occurred in 1969, Congress mandated temporary housing assistance in precise terms. Section 10 of PL 91-79 was very specific in authorizing the President to provide "dwelling accommodations for individuals and families displaced by a major disaster," and to utilize any of four listed types of accommodations: unoccupied housing owned by the Government, housing owned by a local public housing agency, leasing of existing dwellings and leasing of mobile homes or other readily fabricated units. The sites were to be provided by the State or local governments under regulations to be established. The accommodations were to be provided at rentals which took into consideration the occupant's financial ability, and with the further provision that the rentals could be compromised and adjusted, but in no case to be in excess of 25 percent of the family's monthly income.

When Congress next revised its disaster housing legislation in 1970, it applied to Section 226 in PL 91-606 some of the lessons learned in the Camille experience. Instead of specifying the various types of housing available (as in PL 91-79), Section 226(a) simply authorized the Director "to provide temporary housing or other emergency shelter, including but not limited to, mobile homes or other readily fabricated dwellings...." The change of wording suggests that Congress recognized the need of allowing the administering agency greater discretion in determining the most practicable means of carrying out its charge. No restrictions were imposed such as the leasing of mobile homes, thus, allowing the agency to make purchases if it chose. Congress had learned in the Camille experience that leasing homes for the one-year period involved more trouble and cost than it was worth. Section 226 also provided for no rental charges up to one year, and provided further that "thereafter, rentals shall be established based upon fair market value of the accommodations...adjusted to take into consideration the financial ability of the occupant." Where emergency housing had been purchased by the Government, the units could be sold to the occupants "at prices that are fair and equitable."

The Act provided that, as in PL 91-79, the State or local government or the owner or occupant must provide the "site complete with utilities" without charge to the Government, but allowed the Director to make exceptions where he "may elect to provide other more economical and accessible sites at Federal expense when he determines such action to be in the public interest."

Section 226(b) was a new provision which authorized the President to provide assistance in the form of mortgage or rental payments for individuals or families "who as a result of financial hardship caused by a major disaster, have received written notice of dispossession or eviction from a residence by reason of foreclosure... cancellation of contract of sale, or termination of any lease entered into prior to the disaster. Such assistance should not exceed one year or the duration of the period of financial hardship, whichever is the lesser."

During the Agnes disaster, a new type of temporary housing assistance had come into being which was soon to be explicitly sanctioned in the new Act. In the Wilkes-Barre area especially, it was found that many of the houses damaged by the floods, while not inhabitable in their present condition, were repairable at a reasonable cost and within a time interval that offered this option as a practicable alternative to having the family move into a mobile home on a separate site. Necessity - sheer numbers and the need for providing housing before the oncoming cold weather-caused "mini-repair" to be invented. As early as July 10, within a few weeks of the Agnes flood, the General Counsel of OEP had submitted to its Director a memorandum "Restoration or Repairs in Lieu of Alternative Housing."⁹⁷ He argued that "On its face, the statute confers wide discretion on the Director in the choice of methods to make available temporary housing or emergency shelter," and since in the past Federal funds had been used to purchase mobile homes, minimal repairs to owner-occupied homes should be regarded as a feasible alternative ("not intended as a backdoor device") to achieve the same objective. He stated that the amounts of money to be expended in returning the families to their own homes and the time interval needed to accomplish the repairs might offer advantages in savings of time and possibly of money once a determination was made on the amount of repair and restoration that should be authorized. The decision to use "mini-repair" having been made, it was found that many of the flooded families could be temporarily housed in "campers" or recreational vehicles temporarily placed on their lots until the "mini-repairs" were completed. Under the mini-repair option, 2,780 houses were repaired as an alternative to mobile homes. The

costs averaged about \$3,000 for mini-repair as against more than twice that amount for using mobile homes placed in a trailer park. 98

It was not surprising, therefore, that when S. 3062 was offered to the Senate on February 26, it included mini-repair, but as a separate section of the Act, in the following form: Section 404, Temporary Housing Assistance, and Section 405, Restoration of Private Homes to Habitable Condition.99

Section 404 of S. 3062 restated the substance of Section 226 of PL 91-606 with a few word changes and in almost the exact form as the present Section 404 of PL 93-288. Section 405 was another matter, however, since it provided that "In lieu of providing other types of temporary housing or emergency shelter after a disaster100 or a major disaster (emphasis added), the President was authorized to expend funds to restore owner-occupied private residential structures to a habitable condition." In addition, Senator Burdick's bill provided a maximum limit of \$2,500 for repairing each house, and specified further that the assistance under this section could not be used for "major reconstruction or rehabilitation."

In his memorandum of March 29 to Senator Burdick's Committee, FDAA Administrator Dunne offered a number of ideas that may have been influential in shaping the temporary housing section to its present form. He indicated that to provide mini-repair for "disasters" (as distinct from declared emergencies or major disasters) was not in consonance with the rest of the Act. He suggested that since minirepair was an alternative form of temporary housing, it belonged as part of Section 404 rather than a separate section of the Act. He urged also that the maximum limitation of \$2,500 be deleted as impractical, and that the maximum be left to administrative determination. He proposed also a new provision that the President be allowed "to transfer, at the end of disaster occupancy or the statutory free-rent period, mobile homes or other forms of temporary housing to other governmental entities and to volunteer organizations for the purpose of providing temporary housing assistance to disaster victims."101

All of Mr. Dunne's recommendations were incorporated into Section 404 in S. 3062 as it was passed by the Senate on April 10. The only change was the addition of paragraph (d)(2) which was a proviso that in the sale of temporary housing units to governmental entities or voluntary organizations, they covenant to comply with the anti-discrimination requirements of Section 311 of the Act. The Conference Committee accepted the revised S. 3062 without further change.

In summary, Section 404 consists of the following parts: (a) authorization for the provision of temporary housing for the first year without a rental charge, with sites and utilities to be furnished by the State or local government or by the owner or occupant of the site; (b) authorization to provide mortgage or rental payments up to a year for cases of financial hardship for families being dispossessed, evicted or having their mortgage foreclosed; (c) authorization for mini-repair of owneroccupied homes; (d) authorization for the sale of temporary housing units to States, local governments or voluntary organizations on condition they comply with the terms of nondiscrimination in Section 311.

Section 407, Unemployment Assistance

Section 407 re-enacted in a slightly altered form the provision of unemployment assistance that had begun in Section 12 of PL 91-79 in 1969, and was renewed in Section 240 of PL 91-606 in 1970. In introducing S. 3062, Senator Burdick commended the usefulness of this type of assistance in disasters during the previous four years in providing income maintenance at the time of greatest need, and also in bolstering the economy by restoring purchasing power, yet not duplicating assistance furnished from other sources. In the four years from December 1969 to 1973, 207,000 disaster victims had received over \$48 million in unemployment payments and, as a result of Hurricane Agnes, 43,000 persons had been paid over \$1 million.¹⁰²

Section 407 of S. 3062 provided essentially the same assistance as in the previous laws, e.g., payments as the President deems appropriate while the individual is unemployed but not to exceed the maximum amount and the maximum duration under the unemployment program of the State in which the disaster occurred. However, it also included a provision which would extend the term of the assistance up to one year if the individual had exhausted his eligibility for further assistance "or until...reemployed in a suitable position." The bill also directed the President to provide the assistance through agreements with States "which in his judgment have an adequate system for administering such assistance through existing State agencies." Senator Burdick noted that since "competent agencies exist in every State to administer unemployment insurance" there were "obvious advantages" to be "gained by using the services and personnel of those established agencies."¹⁰³ Section 407 also contained in paragraph (b) a provision that authorized the President to "provide re-employment assistance services under other laws."

Section 407 was passed by the Senate on April 10 as presented, but with an additional paragraph (b) which defined precisely the legal meaning of the phrases, "not otherwise eligible for unemployment compensation" and "exhausted their eligibilities," in terms of existing Federal statutes.

As in many other sections of the Act, it was left to the Conference Committees to determine the final language of the unemployment assistance provision.¹⁰⁴ The Committee saw fit to recommend the maximum duration of up to a year after the date of the declaration¹⁰⁵ and eliminated the references to "not otherwise eligible for unemployment compensation" and "exhausted their eligibilities." Instead, the Act states, "as long as the individual's unemployment caused by the major disaster continued or until the individual is reemployed in a suitable position, but no longer than one year after the major disaster is declared." The amount of the assistance per week was stated in terms of the "maximum weekly (emphasis added) amount authorized under the unemployment compensation law of the State in which the disaster occurred." As in the previous Acts of 1969 and 1970, the compensation was to be reduced "by any amount of unemployment compensation or private income protection insurance available to the individual for such week of unemployment." The President was directed to use existing State systems through agreements with the States when in his judgment their systems were adequate. In paragraph (b), the President was authorized to provide reemployment assistance services to assist the unemployed.

Section 408, Individual and Family Grant Programs.

The adoption of individual and family grants almost certainly came about because Congress was convinced that if it tried to reinstate loan forgiveness, the President would veto it. The earlier part of this chapter narrated the efforts in both chambers to include loan forgiveness in the law, and pointed out that its sponsors were warned that the entire bill might be vetoed because of it. The individual and family grant program of Section 408 was the convenient substitute,¹⁰⁶ and one that could hardly fail in its acceptance by the White House which itself had introduced the idea in S. 1840 the year before.

The concepts contained in Section 408 in S. 3062 when it was first introduced departed widely from the original Section 501 of Title V, Disaster Grants for Needy Families, of S. 1840. There were indeed similarities - the name of the grant, the funding on the basis of a 75 percent-25 percent split, the administration of the grant by the State - but the differences were greater than what they had in common. Even though

the total amount of each grant in Senator Burdick's bill was less, - \$2,500 compared to \$4,000, S. 3062 breathed a more generous spirit when compared to S. 1840.

S. 1840's grant was to be given according to these terms:

(a) It required a means test of low income based on a standard to be determined by the President, (b) the amount of the grant was to be based on the number of low income families affected by the disaster, for which the Federal contribution was to be a maximum of \$3,000 per family; (c) the program was to be administered by the State and the Governor "shall have complete discretion in determining eligibility requirements;" (d) the purpose of the grant was stated as "assisting the State in indemnifying the uninsured property losses of needy families, and thereafter to aid such families in meeting such other extraordinary disaster-related expenses as the State may recognize" (emphasis added); (e) each applicant must have complied with the insurance requirements of the Act and that no payments shall be made for repair or replacement of property in excess of its actual insured loss; (f) no grants were to be used for business purposes; and (g) the maximum individual grant was to be \$4,000, of which the State share was 25 percent, and for which the State could obtain an advance from the Government.

Section 408 of S. 3062 adopted some of the features of S. 1840 and some of the language such as "to meet extraordinary disaster-related expenses," but the contrast in the spirit and tone of the section is a marked one. One of the concerns clearly borne out from the Senate hearings was the idea of a means test for eligibility based on low-income. It was generally recognized that disasters affect all income classes, and that a middle income family can almost instantly be reduced to penury and need.¹⁰⁷ In explaining the section's intent, Senators Burdick and Domenici stated, "Needy as used in this section refers to need created by the disaster and is not tied to a means test or an individual's income before the disaster. The approach used in this bill is to permit those victims most in need to obtain the most relief."¹⁰⁸

The word insurance was not mentioned in the bill, whereas it appeared to be the centerpiece of S. 1840. The language of its first paragraph leaves little doubt as to what the money was to be used for:

"...to provide financial assistance to persons adversely affected by a major disaster who are limited in their abilities to meet extraordinary disaster-related expenses or needs or to obtain human needs or services, including but not limited to food, communication, water, clothing, utilities services, and public transportation." ¹⁰⁹

Although this list of specifics of the grant was omitted in subsequent revisions, there is little doubt that, as worded, the intent was to interpret the terms of human needs broadly. Whereas, S. 1840 spoke only of "extraordinary disaster-related expenses," S. 3062 added "...and needs, or to obtain human needs and services." It added as further clarification that the grants were to be made available when other sections of the Act did not provide sufficient assistance: "Such grants shall be made for use only in cases where assistance under Section 407 (Unemployment Assistance) or other provisions of this Act is insufficient to allow persons to meet such expenses or needs." The limit of each grant was set at \$2,500.

Section 408 of S. 3062 accepted the design of S. 1840 for funding of the grant: the Federal Government would pay 75 percent of the cost and would advance the State's share if necessary, and it included a provision of paying 3 percent of the total grant to be "utilized for administrative purposes." It accepted also the provision that the State government would administer it, but added that there would be a Federal audit. The other big difference is that it rejected the idea of allowing each Governor the undisputed authority to determine what items of extraordinary disaster-related expenses the grant could pay for, and who would be eligible. Section 408 instead provided "The President shall promulgate regulations that shall include national criteria, standards, and procedures for the determination of eligibility and the administration of individual assistance grants made under this section."

In the form in which the Senate passed Section 408 on April 10, a number of changes had been made by the Senate's Public Works Committee, some of which were word changes that simplified the language in the first bill, and some very important changes in the concepts. In paragraph (a), it merely referred to those "...who are unable to meet disaster-related expenses and needs," and eliminated the references to the detailed list of kinds of human needs. A very important change was effected by altering the sentence referring to Section 408 by replacing it with, "Such grants shall be made only in cases where assistance under other provisions of this Act, or other appropriate laws, or other means (emphasis added) is insufficient to allow persons to meet such expenses or needs." The bill passed by the Senate was clearly taking a broader view of kinds of assistance that might be available other than in

this Act," such as SBA loans or aid received from the voluntary relief organizations. In other words, the changed wording was saying that if and when all other forms of disaster relief are insufficient to meet the extraordinary disaster-related expenses and needs of the applicant, he or she becomes eligible for an individual or family grant. This was indeed an important change. Another very significant change came about as a result of the a series of tornadoes which struck a 10-State area on April 3-4, 1974. Under the leadership of Senator Howard Baker of Tennessee a group of Senators from the tornado-affected States communicated to the Chairman of the Committee their conviction that \$2,500, the maximum amount of the grant per family, "was insufficient to meet the requirements of a disaster such as the one last week."¹¹⁰ They asked that the amount be increased to \$5,000, and it was in this form that the Senate passed it.

Earlier in this chapter, in tracing PL 93-288 through its passage by Congress, it was observed that the House of Representatives found itself unprepared to consider the Senate bill S. 3062 before its spring adjournment. In order to temporize and force a meeting in conference, at the motion of Chairman John Blatnik of the House Public Works Committee, the House voted to pass its own bill in the form of an amendment to the existing PL 91-606, as Section 256.¹¹¹

Section 256 was essentially a repeat of Section 408 under a different arrangement of paragraphs, with the following two alterations: It provided that "Where a State or a political subdivision (emphasis added) is unable to pay its share, the President is authorized to advance to such State 25 per centum share, and any such advance is to be repaid to the United States when such State or political subdivision is able to do so."

When the Conference Committee convened to make its recommendations as to the final form of the bill, it accepted the clause allowing advances to be made to the State, but rejected the provision that the grants or advances would be made directly to the political subdivisions.

"The conferees do not wish to curtail the participation of local governments in the grant program, but the conferees do wish to establish procedures through which the Federal Government may deal directly and exclusively with States affected by major disasters." (Emphasis added.)

This narrative has traced in detail the metamorphosis of Section 408, as enacted, and has been able to account for the derivation of each change in the wording of the Act as it developed - except for two very important words in paragraph (a). As the paragraph now reads, the grants are "...to meet disaster-related necessary expenses or serious (emphasis added) needs of individuals and families..." These two words "necessary" and "serious" were added by the Conference Committee even though there is no reference to them in its report, or in fact during the debates on the floor of either chamber. The Conference Committee report, dated May 13, does not allude to these word changes, which leaves some mystery as to exactly when or how they originated.¹¹² The proposed "Disaster Relief Act of 1974," as reproduced in the Congressional Record¹¹³ of May 9, shows Section 408(a) to read "...to meet disaster-related necessary expenses or serious needs." One may infer from the inclusion of these qualifying adjectives that the Conference Committee felt that in the absence of a means test, some limitation in the language was necessary to enable the administering agency to write meaningful regulations to carry out the Congressional intent.

The only other change was the determination of the effective date of the section as April 20, 1973 - over one year earlier. As explained in this chapter, its purpose was to offer the grant to the States that had had major disaster declarations since April 20, 1973, when loan forgiveness had been cancelled, the grants being a kind of quid pro quo for loan forgiveness.

Since Senator Taft and others had expressed concern that the States might be inexperienced in administering the grants, the Conference Committee wished "to make clear [their] intent that Federal technical assistance and expertise should be made available to assist States...to put this grant program into effect as smoothly and rapidly as possible."¹¹⁴

Section 409, Food Coupons and Distribution

Authorization to provide and distribute food coupons to low-income households in major disaster areas was first provided in Section 11 of PL 91-79 in 1969, and was renewed in the Act of 1970 in Section 238, Food Coupons and Distribution. Section 409 in the new Act was an exact repeat of the language of Section 238 except for substituting the President for

the Director of OEP. It authorized the Secretary of Agriculture to distribute food stamps in major disaster areas to low income households unable to purchase adequate amounts of nutritious foods. Such coupon allotments and surplus commodities are authorized to be made available as long as necessary, as determined by the Secretary, taking into account the consequences on the household's earning power as affected by the disaster.

Section 410, Food Commodities

Although the Department of Agriculture had engaged in supplying food commodities for mass feeding in major disaster areas for some time, it was deemed necessary to add in the Act this new section which authorized it - possibly to win the support in Congress of agricultural interests. It authorized and directed the President to provide food commodities which will be readily and conveniently available for mass feeding and distribution purposes in major disaster areas, and directed the Secretary of Agriculture to utilize funds so appropriated to purchase food commodities necessary to provide adequate supplies in any areas for which an emergency or major disaster was declared.

Section 411, Relocation Assistance

A provision for the payment of relocation assistance was included for the first time in Federal disaster relief legislation in Section 254, Relocation Assistance, of PL 91-606. The provision had been introduced by Senator Tower of Texas who explained that it was needed to assure equity to persons who had been forced by major disasters to vacate their homes or businesses and who might be denied payment because they were unable to return to their homes or place of business before they had been condemned or acquired by governmental programs, such as urban renewal. The 1970 act had stated that "Notwithstanding any other provision of law, no person otherwise eligible for any kind of relocation assistance payment authorized under Section 114 of the Housing Act of 1949 shall be denied eligibility as a result of his being unable, because of a major disaster... to reoccupy property from which he was displaced by such disaster."

Since the enactment of PL 91-606, Congress had passed a new act, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL 91-646), which provided in great detail the policies and procedures relating to the owner's right under the Act. However, to make sure that the

victims of major disasters would not be denied equitable treatment under the new Act, Section 411 was retained in PL 93-288 to assure relocation assistance, but limited to "replacement housing payment," to read, "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under" the above act "...shall be denied such eligibility as a result of his being unable.... to meet the occupancy requirements set by such Act."

Section 412, Legal Services

A section of the act authorizing legal services for low-income individuals appeared for the first time in the previous act, PL 91-606, as Section 239, Legal Assistance. Section 412 was identical except that it delegated its authority to the President instead of the Director of OEP. It authorized for low-income individuals legal services adequate to meet their needs, consistent with the goals of the program and assured that the programs are conducted with the advice and assistance of appropriate Federal agencies and State and local bar associations.

Section 413, Crisis Counseling Assistance and Training

Section 413, in providing crisis counseling assistance was a new addition in the act, and in the words of Senator Burdick, its main sponsor,

...would remove any doubt that now exists about authority to make such grants or provide aid for psychological problems resulting from major disasters and would provide financial assistance for such purposes from the President's emergency fund.¹¹⁵

The Senate hearings had recorded that in particularly traumatic disasters of sudden shock or those involving loss of life - such as in the San Fernando earthquake, the Rapid City floods and in Wilkes Barre -- there was a reported need for mental health counseling, especially for the young and the elderly¹¹⁶. Although Federal funds had been expended for such purposes by the Department of Health, Education and Welfare on behalf of the National Institute of Mental Health, there had been delays in starting such programs because of the uncertainty of the funding authority. Section 413 removed any legal doubts by authorizing the President (through the National Institute of Mental Health) to provide professional counseling services (including financial assistance to State or local agencies or private mental health organizations to provide such services, or training of disaster workers) to victims of major disasters.

Section 418, Timber Sale Contracts

This section was an exact replacement of the Section 242, Timber Sale Contracts, which was itself a copy of Section 3 which originated the provision in PL 91-79 in 1969. It authorized the Secretaries of the Departments of Agriculture and the Interior to conclude financial arrangements to subsidize road repair costs in major disaster areas under a formula basis to enable completion of existing timber sales contracts, and to allow the cancellation of such contracts where the damages are so great as to render these cost-sharing arrangements impractical. It also provided authority for the Secretary of Agriculture to reduce the minimum period of advance public notice for timber sales to expedite timber removal and sustain the local economy. It further authorized the President to make grants to a State or local government for the removal of timber from privately owned lands damaged as a result of a major disaster, the grants to be paid to persons removing such timber, and the amounts to be limited to the amount by which the actual expenses exceed the salvage value of the timber.

Title V, Economic Recovery for Disaster Areas

Title V of the act is being considered separately for a number of reasons: (1) Title V was put in PL 93-288 not as an integral part of the regular programs to be administered by FDAA, but as an amendment to the Public Works and Economic Development Act of 1965 as a new Title VIII - Economic Recovery for Disaster Areas. (2) Whereas all the other sections of the act refer to the early time phases of a disaster (pre-disaster emergencies, during and soon after disaster impact), Title V is focussed only on long-range economic recovery, applicable only to disasters of unusual magnitude or for such intractable problems as unemployment levels that impede economic recovery. (3) Title V sets up an entirely different system of organization and machinery from that in other sections of the act. (4) Finally, it must be noted that since the enactment of PL 93-288, Title V has never been invoked by the President. It is a reasonable inference that the longer it remains dormant, the less likely that it will spring to life. During periods of budget stringency, one may assume that the prospect of Title V being authorized is relatively bleak. Even though one may conjecture that Title V would be used only in a catastrophic or maxi-disaster, it is reasonable to suppose that the President might choose

to create his own machinery to manage such a disaster's economic recovery rather than use the cumbersome and inflexible system specified in the Title.

The Title subsumes six sections of the act, all of them being integral parts of the same program. Under the circumstances, they can be described here, not separately but together in this analysis. The sections are: Section 801, Purpose of Title; Section 802, Disaster Recovery Planning; Section 803, Public Works and Development Facilities Grants and Loans; Section 804, Loan Guarantees; Section 805, Technical Assistance; Section 806, Authorization of Appropriations.

The inclusion of Title V in the act was likely the result of a number of suggestions presented in the Senate hearings, and may have been authored principally by Senator Domenici of New Mexico who appears to have taken a personal interest in promoting a long-range recovery program. Senator Domenici stated on February 26, in introducing S. 3062,

"The testimony received by the subcommittee on Public Law 606 indicated wide support for the act as far as it goes. The most critical testimony our subcommittee received related to Federal activity in the post-disaster, long-range recovery phase. The hearings pointed up a serious lack of policy direction and planning for long-range recovery efforts."¹¹⁷

At the cities in which the hearings were held, the Subcommittee was reminded that while the Federal program provided significant assistance for immediate needs, the legislation provided no assured or guaranteed long-range recovery funds. For the Camille, Rapid City, and Agnes disasters, expedients had been devised to obtain Federal funding for more regional development projects, but always with uncertainties, delays, and sometimes frustrated efforts to bring together enough funds from different Federal programs to make a successful package.¹¹⁸

The sections of the act that comprise Title V were the result of trying to meet the needs presented to the Subcommittee.¹¹⁹ In Section 801, Purpose of Title, the first section is in the form of an amendment to the Public Works and Economic Development Act of 1965 which adds a new title to the act ("Title VIII - Economic Recovery for Disaster Areas") which is stated as "...to provide assistance for the economic recovery, after the period of emergency aid and replacement of

essential facilities and services, of any major disaster area which has suffered a dislocation of its economy of sufficient severity to require (1) assistance in planning for development to replace that lost in a major disaster; (2) continued coordination of assistance available under Federal-aid programs; and (3) continued assistance toward the restoration of the employment base." In other words, the new title is to be applicable not to all declared major disasters but only those which meet the above description.

Section 802, Disaster Recovery Planning, provides that the Governor of the affected State may request the President for assistance under the title. Within 30 days after the President has authorized such assistance, the Governor shall designate a Recovery Planning Council. The remainder of the section describes the composition of the Council and its functions:

The most important parts of Title V are found in the first sentence of the next three sections, Sections 803, 804 and 805 wherein the wording used in each case is "The President is authorized...." In no section of Title V does it read that the President "shall...." Section 803 authorizes the President to provide for implementing the recovery investment plan, indicating the purposes for which the funds may be used, with a limitation of 90 percent for the Federal share. In this section, the interest rate was set as the Treasury rate less one percent. It contains other limitations that would prevent the use of Federal funds to assist an industrial plant in relocating (i.e., "a runaway plant") as to adversely affect jobs in existing plants. Section 804 provides the President with authority to guarantee loans - up to 90 percent of the total loan - made to private borrowers by private lending institutions. Section 805 provides authorization to make technical assistance available for purposes of carrying out the title, and to make grants up to 75 percent of the costs to defray administrative expenses of the Recovery Planning Councils, allowing the States to contribute the remaining share in kind. Section 806 authorizes an appropriation not to exceed \$250 millions to carry out the title.

Title VI - Miscellaneous

Section 601, Authority to Prescribe Rules

It is not known why Section 601 was added as a separate section since its contents exactly reproduce a sentence in Section 302(a) Federal Assistance, which states:

The President may prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this Act, and he may exercise any power or authority conferred on him by any section of this act, either directly, or through such Federal agencies as he may designate.

It is observed that Section 601 was not included in the original S. 3062, but had been added when revised prior to passage by the Senate on April 10. The existence of the above passage in Section 302 (a) may have been overlooked, but it is also possible (since the language is identical), that Congress may have wanted to emphasize the unquestioned authority of the President to prescribe rules and regulations for implementing the act.

Section 602, Technical Amendments

The purpose of this section was to revise the existing law by making the necessary amendments to conform to the new 1974 Act. As was noted earlier, during the period in which PL 81-875 had been in effect, numerous provisions had been added by Congress, some of them in the form of direct amendments to PL 81-875, others as ancillary and corollary actions which depended upon a major disaster declaration.

Since PL 81-875 was repealed, its amendments and corollary laws had likewise to be replaced. Subsections (a) through (l) of Section 602 relate to specific Federal statutes being so amended, and in this section, each will be briefly referred to. The last paragraph of Section 602 serves as an all-inclusive catchall statement covering all references to PL 81-875 not otherwise listed. It reads:

(m) Whenever reference is made to any provision of law (other than this Act), regulation, rule, record, or document of the United States to provisions of the Disaster Relief Act of 1970 (84 Stat. 1744), repealed by this Act, such reference shall be deemed to be a reference to the appropriate provisions of this Act.

The meaning and intent of each of the listed subsections will be explained as follows:

Subsection (a) amends the Housing Act of 1954, Section 701(a)(3) (B)(ii), making it apply to the new Act of 1974. That particular section of the Housing Act referred to the Section 701 planning grants made available for cities, other municipalities and counties situated in redevelopment areas or economic

development districts as designated by the Department of Commerce under Title IV of the Public Works and Economic Development Act of 1965 which have suffered substantial damage as a result of a major disaster.

Subsection (b) amends the National Housing Act of 1953, Section 8 (b)(2), similarly making it apply to the 1974 Act. This provision related to the eligibility, conditions and limitations on the amount of mortgage insurance as administered by the Department of Housing and Urban Development. It will be observed that in a number of the subsections, the amending form was to strike out Section 2(a) of PL 81-875 and to substitute Section 102(1) in its place. Section 102(1) is identical to the corresponding section of PL 81-875 in defining the meaning of a major disaster, except that additional types of disaster events had been added.

Subsection (c) also referred to a housing act, the Act of 1954, Section 203(h) which, in order to assist in reconstruction, makes mortgage insurance available to the mortgagor who is the owner-occupant of a single dwelling when damaged or destroyed in a major disaster.

Subsection (d) relates to the provision in the Disaster Relief Act of 1966, PL 89-769, Section 4, which extends to the victims of natural disasters the same rights for housing as it does to those families displaced by urban renewal or as the result of other governmental action.

Subsection (e) served to replace the PL 81-875 reference in PL 90-247, an Act of 1967, "Assistance for Current School Expenditures in Cases of Certain Disasters" in which the Director of OEP was authorized, with respect to any local education agency (any elementary or secondary public school) to determine that it was located in a major disaster area, leaving it to the Commissioner of Education to provide the assistance. It may be noted here that the text of subsection (e) refers to "Public Law 874 instead of 247--an error in the printing. The same error is repeated in the current subsection (e).

Subsection (f) is similar to (e) above in that it also refers to replacing PL 81-875 with respect to another Act relating to the public schools; this one, PL 89-313 of 1965, "An Act to provide financial assistance in the construction and operation of elementary and secondary public schools in areas affected by a major disaster."

Subsection (g) also relates to amending an educational act: in this instance, the Higher Educational Facilities Act of 1963 which had been amended by the Federal Disaster Relief Act of 1966, PL 89-769, which offered to the higher educational facilities the protection and benefits of PL 81-875 now replaced by PL 93-288.

Subsection (h) provides for amending the Internal Revenue Code of 1954 to make it apply to PL 93-288, in which its Section 165(h)(2), as provided by PL 87-426, allows tax deductions for losses for the taxable years attributed to major disasters.

Subsections (i) and (j) also applying to the Internal Revenue Code of 1954, provided for the remission of taxes by the Secretary of Treasury equal to the amounts paid when the products on which the taxes had been paid were subsequently lost, rendered unmarketable or condemned. Subsection (i) referred to distilled spirits, wines and beer, and (j) to tobacco products, cigarette papers and tubes.

Subsection (k) amended an act of 1954, PL 83-451 (68 Stat. 330), an act "To provide for continuance of Civil Government for the Trust Territory of the Pacific Islands" to make it applicable to the new disaster relief act. (Note: Section 3 referred to is in error: a misprint, should be Section 2.)

Subsection (l) is the only new paragraph or change in Section 602, all the others being the same as in PL 91-606. Its purpose is to make Section 1820 (f) of Title 38 of the United States Code applicable to the new disaster relief act. Title 38 has reference to Veterans' Benefits, and Section 1820 (f) pertains to the code's administrative provisions, defining the powers and responsibilities of administering assistance to veterans affected by a major disaster, and especially under Section 233 of PL 91-606 which was not repealed.

Subsection (m) already referred to above, states that all legal references to the previous act PL 91-606 shall be deemed to refer to the new act.

Section 603, Repeal of Existing Law

Since the Disaster Relief Act of 1974 was replacing the existing act, Section 603 provided that the Disaster Relief Act of 1970 "is hereby repealed, except sections 231, 233, 234, 235, 236, 237, 301, 302, 303, and 304," and provided further that the act of 1970 "shall continue in effect with respect to any major disaster declared prior to the enactment of this Act."

All of the sections of the 200 series above relate to the disaster loan sections which Congress determined were to remain intact, and the sections in the 300 series were "Miscellaneous" sections relating to technical amendments, etc.

The sections of PL 91-606 that were to be continued in effect are:

- Section 231, Small Business Disaster Loans
- Section 233, Loans Held by the Veterans Administration
- Section 234, Disaster Loan Interest Rates
- Section 235, Age of Applicant for Loans
- Section 236, Federal Loan Adjustments
- Section 237, Aid to Major Sources of Employment

- Section 301, Technical Amendments
- Section 302, Repeal of Existing Law
- Section 303, Prior Allocation of Funds
- Section 304, Effective Date¹²⁰

Section 604, Prior Allocation of Funds

The section stated that "Funds, heretofore appropriated and available under Public Laws 91-606, as amended, and 92-395 shall continue to be available for the purpose of providing assistance under those Acts as well as for the purposes of this Act." This section replaced Section 303 of the same title in PL 91-606 which had stated that funds already allocated under the existing acts and not expended on the date of enactment of the successor act continue as obligations of the government. The purpose of including PL 92-385 here is explained by the Conference Report as "completing commitments made under such Acts...."¹²¹

Section 605, Effective Date

The effective date of the act was made retroactive to April 1, 1974, except for Section 408 which provided an effective date of April 20, 1973. The April 1st date was affixed to make the law applicable to the States which had suffered the April 3-4 tornadoes. The effective date established in Section 408 was to enable States for which major disasters had been declared since April 20, 1973, to participate in the individual and family grant program in lieu of the repealed loan forgiveness program.

Section 606, Authorization of Applications

This section provided that "Except as provided by the amendment made by Section 501 of Title V, there are authorized to be appropriated to the President such sums as may be necessary to carry out this Act through the close of June 30, 1977."

Except for PL 91-79, which was designed only as temporary legislation for the Camille disaster, PL 93-288 was the first disaster relief act to establish a termination date which would require a renewal of the appropriating authority after three years.

The Disaster Relief Act of 1974, which became Public Law 93-288, was approved by the President on May 22, 1974.

CHAPTER VII

FOOTNOTES

1. Hearings before the Subcommittee on Disaster Relief of the Committee on Public Works, U. S. Senate, 93rd Congress, 1st Session, in 6 parts, "To Investigate the Adequacy and Effectiveness of Federal Disaster Relief Legislation." Part 1, March 24, 1973, Biloxi, Mississippi; Part 2, March 30-31, 1973, Rapid City, South Dakota; Part 3, May 11-12, 1973, Wilkes-Barre, Pennsylvania; Part 4, Washington, D. C.; Part 6, March 6, 1974, Washington, D. C. Hereafter, cited as "Hearings."
2. Hearings, Part 1, p. 222.
3. Op. Cit. subparagraph p. 2.
4. The study was conducted as an in-house activity and almost none of its analysis (except for President Nixon's "New Approaches" message of May 14, 1973) was released as public documents.
5. Memo of W. H. Kolberg, Assistant Director for Program Coordination, to Frank Carlucci, January 11, 1973.
6. Report to the Congress, "Disaster Preparedness," by Office of Emergency Preparedness in 3 volumes, January 1972, Washington, D. C.
7. This information is taken from the Task Force "Report of the Field Investigation - Disaster Study," November 2, 1972.
8. "State Disaster Relief Administration," Council of State Governments, March 1971, 63 pp.
9. In making this statement, it is not intended to denigrate the legal authority of the President's staff to determine what policy it wished to propose. But at the same time, the historian cannot overlook the fact that the study went to considerable effort and expense to provide objective findings that the White House largely ignored.
10. Memorandum to Robert Schnabel from Steve Gamble, Subject: Disaster Relief Options, November 29, 1972.
11. Message from the President of the U.S., A Report on "New Approaches to Federal Disaster Preparedness and Assistance". May 14, 1973, 93rd Congress, 1st Session, House Document No. 93-100.

12. On the House side, S. 1840 was introduced by Chairman of the Public Works Committee, John A. Blatnik, and William H. Harsha as H.R. 7690.

13. "New Approaches," p. 16.

14. The inclusion of recreational facilities is not apparent from reading Section 601 which merely reads, "State and local public facilities," since they are not excluded. The President's message, however, indicated that in his bill recreational facilities were not to be eligible.

15. While there may be differences of opinion on the merits of how S. 1840 would handle housing, there is little doubt but that it would greatly diminish the functions and usefulness of the Federal disaster relief agencies. In effect, after delivering the government a check for housing based on the bill's formula, they would have little to do other than coordinating the "emergency services." The Senate hearings on the three disasters - Camille, Rapid City, and the Agnes floods -- had shown that providing housing on a timely basis was certainly one of the most complex and frustrating tasks. On this basis, it is fair to conclude that S. 1840 made the job appear to be far more simple than it was.

16. The other members of the Subcommittee were: Senator Domenici of New Mexico, the ranking minority member, Senator Clark of Iowa, Senator Biden of Delaware, and Senator Buckley of New York. Senators Burdick and Domenici were in attendance at all the hearings and assumed the major role in questioning the witnesses.

17. Hearings. Part 1, p. 2.

18. It is not possible, of course, to summarize the diversity of views presented, but it may be worth recording here a few relevant observations from a careful reading of the hearings. One is impressed first of all that the principal purpose of the hearings is not to elicit expert testimony but rather to obtain views and perceptions. On almost no subject is there detailed and intensive grilling of the witness, or are the answers frequently pursued for either clarity or comprehensiveness. The level of questioning is therefore superficial, with the focus on obtaining views rather than adequate answers. Another observation is the intense level of interest in the subject of disaster relief in communities impacted by disasters and its subsequent decline as disasters recede to last year's happening - the rise and decline in which only those immediately and presently affected remain concerned with the problem. An extreme example is one of the witnesses suggesting its importance as to warrant "a Secretary of Disaster"

as a separate executive department (Ibid, Part 3, p. 1403). Another strong impression is the extent to which the disaster relief role of the volunteer relief organizations has become subrogated by governmental programs in only the last half decade. The cost of providing what has become an acceptable level of relief just became too high for even the American National Red Cross to cope. It was earlier indicated that most of the testimony presented in the hearings was concerned with problems of administration rather than with the law - PL 91-606 - itself, despite the title of the hearings, "To Investigate the Adequacy and Effectiveness of Federal Disaster Relief Legislation."

19. Congressional Record, February 26, 1974, p. 2243.
20. The views of FDAA Administrator Dunne are included in the Hearings: Part 5, pp. 55-81; Part 6, pp. 78-99, pp. 131-164.
21. Hearings, Part V, p. 431.
22. Ibid, Part V, p. 447.
23. Senator Burdick's introductory statement is probably the best single summary of the activities of the Federal disaster relief program during the last two decades of its history. Congressional Record, February 26, 1974, pp. 2220-2226.
24. Ibid, p. 2235.
25. Ibid, p. 2225.
26. Except for Senator Stevenson's effort to include "erosion" in the bill, the written record is virtually non-existent as to who proposed the additional disaster events or the circumstances that prompted their becoming included.
27. In Section 401(c) of S. 3062, the Federal agencies were also required to follow the same procedure as the States in Section 406.
28. In the revised S. 3062 as passed by the Senate on April 10, Section 8 was renamed "Extraordinary Disaster Expense Grants".
29. In explaining this section's intent, Senator Burdick stated: "Unquestionably the intent... was to replace at least in part the previous approach - repealed in 1973 - of providing forgiveness credit in disaster loans with an outright grant based primarily on need." He questioned "...the wisdom of a

29. (Continuation)

Federal subsidy for disaster-caused property losses which is not related to need and is not proportional to the loss suffered." Congressional Record, January 26, 1984, p. 2229. He specifically disclaimed any means test. "Needy" as used in this section refers to need created by the disaster and is not to be tied to a means test or an individual's income before the disaster."

30. This was the result of efforts by a coalition of senators from the nine States affected by the April tornadoes. See communications in Hearings, Part 6, pp. 76-77.

31. The number of the Section 256 is somewhat confusing unless it is remembered that PL 92-209 of December 18, 1971, (which had provided for the repair of private non-profit medical facilities) was passed as an amendment to PL 91-606 as Section 255.

32. House of Representatives, 93rd Congress, 2nd Session, Report No. 93-103. This report carries the date of May 13, 1974, after the Senate passed the measure.

33. PL 91-606 which included just about all the substance of PL 93-288 with the exception of Title V, had only three titles: I, Findings, Declarations and Definitions; II, The Administration of Disaster Assistance, which contained all the substantive provisions in 33 sections; and III, Miscellaneous.

34. Hearings, Part 6, pp. 78-99.

35. Ibid, Part 6, pp. 131-164.

36. The original list under PL 81-875 were: "flood, drought, fire, hurricane, earthquake, storm, or other catastrophe."

37. We do know that "mudslide was separately proposed in the House bill but none of the circumstances, except that Kentucky had recently suffered from some major mudslides. See Hearings, Part 6, p. 75.

38. As explained by Senator Domenici of New Mexico, while Indian tribal organizations were not precluded from obtaining disaster assistance under PL 91-606, it was necessary for them to make application to the State or through local governments to apply on their behalf.

39. Hearings, Part 6, p. 153.

40. The requirement of submitting "a State plan" with some elaboration of its purposes and contents is somewhat confusing here. This was interpreted by FDAA as the Committee probably intended, as a "work plan" to qualify for approval of the grant rather than the completed product of the grant, i.e., "plans, programs, and capabilities."

41. By agreement with the Council of State Governments, the Agency developed and published a minimum threshold schedule of expenditures. It established a rough system of equity since the minimum figures for each group of State was based on their total personal income. On the other hand, it was commonly recognized that both the method of obtaining the figures certified by the Governor and sometimes, too, the nature of the expenditures were questionable. Neither OEP nor FDAA specified what constituted eligible disaster expenditures, nor was a Governor's good faith questioned. In consequence, the schedule lacked uniformity in its administration.

42. Congressional Record, April 10, 1974, p. S. 56589; also in Hearings, Part 6, p. 149.

43. Conference Report, Disaster Relief Act Amendments of 1974, 93rd Congress, 2nd Session, Report No. 931-1037, May 13, 1974, p. 28. Hereafter, designated "Conference Report."

44. Observe that this sentence in Section 302 (a) is repeated as a separate section of PL 93-288, Section 601 - whether by inadvertence or deliberate intent is not known.

45. See Congressional Record Senate, May 9, 1974, pp. 7650, 7655-57; House of Representatives, May 15, 1974, p. 3869.

46. Conference Report, No. 93-1037, May 13, 1974, p. 28.

47. Conference Report, p. 29.

48. No mention is made of an emergency declaration, but it has been interpreted that the same procedure would apply.

49. Conference Report, p. 30.

50. Hearings, Part 3, pp. 890, 922, 1089. The frequent reference to a "czar" may have resulted from the common reference at the time in newspapers and TV to the "Energy Czar" appointed by the President.

51. Ibid., Part 3, p. 1251.

52. Ibid., Part 3, p. 1245.

53. Mr. William H. Wilcox of the Pennsylvania Department of Community Affairs commented on Carlucci's leadership, "..... I think that I agree with most of the favorable comments that have been made about Mr. Carlucci," p. 1167. Also, Senator Domenici's reference, "We cannot write Mr. Carlucci into the law....," p. 1183.
54. Ibid., Part 5, p. 121.
55. Ibid., Part 3, p. 1182.
56. Mr. Wilcox commented on this: Ibid, Part 3, p. 1167, "It was just a terrible turnover, almost a revolving door, of top personnel in many of these agencies. Some of the turnover was because the people weren't able to fit in."
57. Ibid., Part 3, p. 1180. Despite the richness in the English language generally, there is a paucity of terms that can be chosen to give more precise meaning to what is intended.
58. Ibid, Part 4, p. 1800.
59. On this point Mr. Wilcox commented, "One of the problems... is that the grade level of some of the OEP people was below those of regional directors from other agencies, and therefore, in the light of the way the bureaucracy thinks about this sort of thing, that only added to the difficulty of the OEP people doing the coordinating job which the statute directs."
60. Ibid, Part i., p. 200.
61. Ibid, Part i, p. 220.
62. Ibid, Part 3, p. 1252.
63. Ibid, Part 4, p. 1972.
64. Conference Report, pp. 30-31.
65. Hearings, Part 5, p. 198.
66. The use of the term "drayage" in connection with the other types of costs and services suggests that the 1950 act was itself copied from a much earlier act when "drayage" was a commonly used term for horse drawn materials hauling.
67. The first disaster relief act of 1950, PL 81-875 had specified in Section 3 that the Red Cross would be utilized to distribute medicines, food, etc., and in Section 4 gave assurance that the act would not be "construed to limit or in

67. (Continuation)

any way affect the responsibilities" of the ANRC under its Congressional Charter Act of 1905.

68. Following the Agnes disaster, the Red Cross was compelled to recognize that its depleted treasury was no match for the magnitude of the individual assistance needs and that henceforth, the major responsibility would have to be that of the Federal Government. President George Elsey offered the services of his organization to assist in other roles involving individual assistance, but received no acceptance beyond what is included in Section 312. See Hearings, Part 6, pp. 169-170.

69. To this writer's knowledge, Section 313 has never been invoked.

70. Congressional Record, February 26, 1974, p. S. 2227.

71. The explanation for this important policy decision by the Conference Committee's recommendation is not known. It has been suggested that some of the committee members were perturbed that the requirement might result in the Federal Government's getting into the insurance business, even though seen from another point of view, the requirement of private individuals having to purchase insurance might have been regarded as a boon to the insurance industry.

72. Hearings, Part 6, p. 155. Mr. Dunne's arguments against self-insurance for local governments were part of his comments of March 29 comprehending other sections of S. 3062. He argued that local governments in general lacked an adequate base for self-insurance on a sound actuarial basis, that they lacked both fiscal resources and trained personnel to establish such a system, and that when faced with a disaster, they would be compelled to seek a statutory amendment to obtain needed relief. Dunne also asked that the provisions for State self-insurance be made consistent with the requirements of the Flood Disaster Protection Act of 1973 wherein HUD's approval was required.

73. The Conference Report reads, "It should be noted that it was the intention of the conferees...not to require under this legislation the purchase of insurance with respect to property owned by individuals." Op. cit. p. 34.

74. Ibid., p. 34.

75. The Conference Report further explained, "The President, in making such determinations, may not require greater types and extent of insurance than are certified to him as reasonable by the appropriate State insurance commissioner. It should be

75. (Continuation)

noted that it is the intention of the conferees that this legislation shall give the President authority to require lesser types and extent of insurance than are certified to him by such State insurance commissioners." Op. cit. p. 34.

76. The origin of Senator Burdick's proposal is not known. The only reference to proposing a wage-price freeze found in the hearings by this writer is a brief suggestion made at the Biloxi Hearings by the President of the Harrison (Mississippi) County Board, op. cit. Part 1, p. 87. Others had complained of price gouging by contractors and merchants, and the Burdick subcommittee presented this proposal as a feasible answer to the problem.

77. Hearings, Part 6, p. 82.

78. Ibid, Part 6, p. 156. The latter statement is contained in Mr. Dunne's comprehensive communication of March 29, 1974.

79. Ibid, Part 6, pp. 76-77.

80. The Conference Report added the additional counsel, "It was the intention of the conferees that the authority granted by Section 318 be exercised judiciously in order to expedite the provision of assistance to areas affected by a major disaster."

81. See reference in Chapter V regarding Section 243.

82. Congressional Record, February 25, 1974, p. 2228.

83. Op. Cit. pp. 40-41. It may be noted here that Section 402(e) includes some of the content of Section 406, but only with reference to public facilities repair and restoration, and includes the reference to "current" applicable codes, specification and standards.

84. Federal assistance for private non-profit educational institutions was provided by PL 93-285. For its initiation, see Chapter VI.

85. Congressional Record, April 10, 1974, pp. 5773, 5775.

86. See Senator Domenici's comment in Congressional Record February 26, 1974, p. S. 2242. It was noted earlier that the provision for assistance to Indian Reservations originated in Section 601 of S. 1840.

87. Congressional Record, February 26, 1974, p. S. 2229.

88. Op. cit. pp. 38-39.
89. The Conference Committee felt that further clarification was needed. Its report devoted almost a page to citing examples of how the current codes were to be interpreted and understood. See op. cit. pp. 38-39. For an explanation of the derivation of the language used in Section 402(a), see Chapter VII, Section 252.
90. For example, in op. cit. Part 2, pp. 204-205, wherein a County Commissioner in South Dakota argued that Federal dollars could be saved by not having to build several bridges and under passes by re-routing a road rather than repairing the existing road.
91. Hearings, Part 6, p. 90.
92. Hearings, Part 6, p. 131. The large project applications of \$100,000 or more during the same period numbered only 100 but used up almost 70 percent of the money.
93. Op. Cit. p. 39.
94. See Hearings, Part 6, p. 64. The three Cities were Pass Christian, Mississippi \$27,583, San Fernando California, \$71,104 and Isleton, California, \$5,241. In the opinion of William H. Wilcox, then Secretary of the Department of Community Affairs for Pennsylvania, Section 241 was subject to three "defects" which he listed as follows: "The first is that it requires a three year running average of the loss for the Federal grant to make up for taxes lost. In an inflationary period such as were in now, the funding average tends to escalate so rapidly that it works out in such a way that the community is not eligible. Secondly, there is a provision in there that there has to be a substantial loss. I think the OEP has set the level of defining the word substantial in the regulations too high.... Defect number three is that it is based on real property alone. Pennsylvania local governments, as it so happens, depends very very heavily on non-property tax income for local government purposes." Ibid, Part 3, p. 1168.
95. Conference Report, 93rd Congress, 2nd Session, No. 93-1037, May 13, 1974, p. 45.
96. Hearings, Part 3, p. 1247.
97. Hearings, Part 3, p. 1261.
98. Hearings, Part 3, p. 1259.

99. In presenting his bill, Senator Burdick appears to have accepted the legal arguments in favor of using mini-repair as another alternative to provide temporary housing, and of its practicality in which OEP had allowed a maximum cost of \$3,000 per dwelling. But the Senator seems to have been ambivalent on whether the scope of the temporary housing program should be limited to major disasters. He referred to the "many witnesses" who had been dislocated from their homes, but were "ineligible for assistance to offset non-insured losses only because their particular catastrophe was not classified as a major disaster.... Consequently, it is proposed that the President's authority to help restore residential structures to habitable condition should apply equally to those damaged by natural hazards considered to be disasters as well as to those determined to be major disasters." Congressional Record, February 26, 1974, p. S. 2229.

100. For explanation of "disaster" cf, "major disaster," see earlier explanation of S. 3062, Sections 102 and 305.

101. Hearings, Part 6, p. 159.

102. Congressional Record, February 26, 1974, pp. 2229-2230; also Hearings Part 3, pp. 974-975.

103. Congressional Record, February 25, 1974, p. 2230.

104. See Conference Report, p. 41.

105. In accepting the maximum term of unemployment compensation of up to a year from the time of eligibility, the Senate had rejected the views presented by FDAA's Director Dunne in which he argued that one year was longer than needed. Hearings, Part 6, p. 162. Senator Burdick had himself attested that the average duration of disaster unemployment compensation had been approximately six weeks. Congressional Record, February 26, 1974, p. 2230. Robert Goodwin, Manpower Administrator of the Department of Labor during the hearings, had also affirmed that the average duration was "slightly more than seven weeks." Hearings, Part 5, p. 149.

106. Senator Burdick in introducing Section 408 in his S. 3062 stated, "Unquestionably that the intent of these suggestions was to replace, at least in part, the previous approach - repealed in 1973 - of providing forgiveness credit on disaster loans with an outright grant based primarily on need." Congressional Record, February 26, 1974, p. 2229.

107. Hearings, Part 6, pp. 122, 125, 205.

108. Congressional Record, February 26, 1974, p. 2252; Ibid, April 10, 1974, p. 5658.

109. Note that the list does not mention shelter or housing - presumably because this was to be provided to all eligible applicants by Section 404.
110. Hearings, Part 6, p. 77; Congressional Record, April 10, 1974, p. S. 5789.
111. Congressional Record, April 11, 1974, p. H. 2961.
112. Op. cit. pp. 41-43.
113. Congressional Record, May 9, 1974, p. S. 7647.
114. Op. cit, p. 43.
115. Congressional Record, February 26, 1974, p. S. 2231.
116. See Hearings, Part 2, pp. 238, 288-289, 392-393.
117. Congressional Record, February 26, 1974, p. 2243.
118. Hearings, Part 1, p. 50; Part 2, pp. 236-237, 318; Part 4, pp. 1796, 1821-1827, 1837-2189; Part 6, pp. 100, 104.
119. The Conference Committee effected some changes in the S. 3062 provisions clarifying the language and in eliminating a "Disaster Recovery Revolving Fund" proposed in Section 506 as well as increasing the amount of the appropriation authorized from \$200 to \$250 million, op. cit. pp. 48-49.
120. It is not clear to this writer why Sections 302, 303, and 304 of PL 91-606 were not repealed. Section 602 of the new law exactly replaced Section 301; Section 302 had repealed the Disaster Relief Acts of 1950, 1966, and 1969, and there was hardly any need for doing so again; Section 303, Prior Allocation of Funds was fully replaced by Section 604 of the new act; and Section 304 which established the effective date for PL 91-606 was not longer even of historic significance.
121. Op. cit. p. 50.