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Justine M. Cannon

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ACCOUNTABILITY IN RECONSTRUCTION: THE NEED FOR FEDERAL INVOLVEMENT IN POST-DISASTER RECONSTRUCTION TO PROTECT HOUSING INTERESTS OF POOR AND MINORITY RESIDENTS

Justine M. Cannon*

I. INTRODUCTION

When a major disaster devastates a region, the cost of both emergency assistance to residents and reconstruction of damaged infrastructure can be exorbitant.\(^1\) Congress has maintained some form of federal disaster relief program for nearly two centuries to assist states in these efforts.\(^2\) The current program provides qualifying states no less than seventy-five percent of the funding necessary to recover from a major disaster.\(^3\)

Congress provides grants to states during post-disaster reconstruction to rebuild devastated regions.\(^4\) Such reconstruction grants are awarded to states virtually unconditionally, even though a mechanism exists to place

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* Senior Technical Editor, Santa Clara Law Review, Volume 47; J.D. Candidate, Santa Clara University School of Law; B.S., Journalism, California Polytechnic State University, San Luis Obispo. Special thanks to my family for their unwavering support.


3. See 42 U.S.C. § 5170b(b) (2000). Funding is also provided to individuals under the federal relief program, but this comment addresses only funding to states.

4. See discussion infra Part II.A.
additional conditions on fund grants. The issue is whether the best interests of all state residents are represented under the current federal disaster relief system, where state officials rebuild a region without federal direction and subject to political pressures existing in the state. Specifically, will the housing needs of the poor and minority communities be adequately considered under a reconstruction system driven by local interests?

This comment highlights potential problems that could arise when the federal government distances itself from state reconstruction planning. Part II sets out background information necessary to formulate a proper analysis in this area. Part II.A describes the disaster relief program in its current form, including discussion of the governing statute—the Stafford Act—and the administrative agency designated to administer disaster relief—the Federal Emergency Management Agency (FEMA). Part II.B discusses the ability to place conditions on federal grants to states. Included in this section is a discussion of the available mechanism to place such conditions and the constitutionality of placing additional conditions on grants.

The history of disaster relief is presented in Part II.C.1, specifically highlighting the difficulty encountered by poor

5. The FEMA-State Agreement places certain binding conditions on a State before federal funds are granted following a major disaster. See infra notes 35-39 and accompanying text. The Agreement acts to: (1) prescribe the manner in which federal aid under the Stafford Act is to be made available; (2) list areas within the State that are eligible for assistance; (3) stipulate any division of costs among federal, state and local governments; and (4) specify the period recognized as the duration of the major disaster or emergency. See 44 C.F.R. § 206.44(b) (2005). Within a typical Agreement, specific requirements regarding the method of rebuilding a region, or the proper planning of such an effort, are not included. See, e.g., Federal Emergency Management Agency, Sample: FEMA-State Agreement, http://www.training.fema.gov/EMI/WEb/IS/is1Toolkit/ (follow “Unit 6: Recovery” hyperlink; then follow “SAMPLE FEMA-State Agreement” hyperlink) (last visited Oct. 20, 2006).

6. See discussion infra Part II.


8. See discussion infra Part II.A.

9. See discussion infra Part II.B.

10. See discussion infra Part II.B.
and minority populations in obtaining relief.\textsuperscript{11} Part II.C.2 transitions into a contemporary disaster relief case study—New Orleans following Hurricane Katrina—to illustrate the circumstances in which the current relief program may be inadequate to facilitate reconstruction efforts.\textsuperscript{12} Part II.D goes on to explore another federal relief program, urban renewal, in order to make comparisons between it and the Stafford Act program.\textsuperscript{13}

The problem this comment identifies—namely, an inadequate level of federal oversight in post-disaster reconstruction by states—is addressed in Part III.\textsuperscript{14} Part IV analyzes the disaster relief program under the Stafford Act.\textsuperscript{15} The section identifies the implications of the Act's current provisions for poor and minority communities, highlights the portions of urban renewal that are somewhat beneficial to these communities, and explains the need for more socially-conscious disaster relief legislation to ensure proper reconstruction of New Orleans and other devastated areas.\textsuperscript{16} This leads finally to the proposal of this comment in Part V—that Congress and FEMA should make reconstruction grants to states conditional on the creation of a comprehensive reconstruction plan that sufficiently addresses the housing needs of poor and minority communities.\textsuperscript{17}

\section*{II. BACKGROUND}

\subsection*{A. Funding in the Wake of Disaster—The Stafford Act}

Federal disaster relief funding to the states is governed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).\textsuperscript{18} The Act governs major disasters\textsuperscript{19} and emergencies\textsuperscript{20} declared by the President\textsuperscript{21} on

\begin{footnotesize}
\begin{enumerate}
\item See discussion \textit{infra} Part II.C.1.
\item See discussion \textit{infra} Part II.C.2.
\item See discussion \textit{infra} Part II.D.
\item See discussion \textit{infra} Part III.
\item See discussion \textit{infra} Part IV.
\item See discussion \textit{infra} Part IV.
\item See discussion \textit{infra} Part V.
\item A "major disaster" is:
\begin{quote}
[\textit{Any natural catastrophe (including any hurricane, tornado, storm, high water, . . . tsunami, earthquake . . .) which in the determination of the President causes damage of sufficient severity and}
\end{quote}
\end{enumerate}
\end{footnotesize}
or after November 23, 1988, providing specific provisions for emergency relief and hazard mitigation.\(^{22}\)

The express purpose of the Act is "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 the suffering and damage caused by disasters."\(^{23}\) Through enactment of the Stafford Act, Congress recognized the necessity for special post-disaster measures to assist affected states in "expediting the rendering of aid, assistance, and emergency services, and [in] the *reconstruction and rehabilitation of devastated areas*."\(^{24}\) Among other things, Congress intended to provide federal assistance programs for both public and private losses sustained in disasters.\(^{25}\) To this end, the President is given power under the Act to prescribe rules and regulations as necessary and proper to carry out the Act's provisions.\(^{26}\)

The Stafford Act further allows the President to exercise the authority given to him by the Act through a federal magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

*Id.* § 5122(2).

20. An "emergency" is:

[Any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.]

*Id.* § 5122(1).

21. The governor of a state must make a request to the President in order for a major disaster to be declared. See 44 C.F.R. § 206.35 (2005) (enumerating the factors upon which the governor should base his/her request for declaration); *id.* § 206.36 (outlining the procedures for requesting an emergency declaration).

22. Specific provisions include encouragement of loss reduction in future disasters, such as obtaining insurance, and establishing a cost-sharing provision between States and the federal government, where the minimum federal share is seventy-five percent of necessary funding. 42 U.S.C. § 5170b(b) (establishing cost-sharing provision); Disaster Relief; Robert T. Stafford Disaster Relief and Emergency Assistance Act; Implementation, Etc., 54 Fed. Reg. 22,162, 22,164 (May 22, 1989) (to be codified at 44 C.F.R. pt. 206) (discussing loss reduction measures).


25. *Id.* § 5121(b)(6).

26. *Id.* § 5201(a)(1).
FEMA is the federal agency chosen to administer disaster relief.\textsuperscript{28} FEMA responded to the Stafford Act by publishing Code of Federal Regulations sections to facilitate the Act's execution.\textsuperscript{29} Incorporating the Stafford Act's purpose of providing federal assistance for both public and private losses and needs sustained in disasters,\textsuperscript{30} the FEMA regulations provide assistance to both affected states and their residents.\textsuperscript{31} Grant assistance to the states funds small and large projects to restore a facility to its prior use,\textsuperscript{32} as well as alternate projects when the public welfare would not best be served by restoring a damaged facility or a function of that facility.\textsuperscript{33} Alternate projects can be used to repair or expand public facilities, construct new facilities, or fund hazard mitigation measures.\textsuperscript{34}

B. Placing Conditions on State Disaster Funding and the Feasibility of Including Additional Conditions

FEMA regulations provide a mechanism for the federal government to place conditions on federal disaster relief to the states—the "FEMA-State Agreement."\textsuperscript{35} The Agreement must be executed between the governor, acting for the state, and the FEMA Regional Director, acting for the federal government, before emergency or disaster funding is extended to a qualifying state.\textsuperscript{36} The Agreement includes the understandings, commitments, and conditions\textsuperscript{37} for assistance

\textsuperscript{27} Id.; see also id. § 5164.
\textsuperscript{28} The President, by Executive Order, delegated his powers under the Stafford Act to the Director of FEMA. Delegation of Disaster Relief and Emergency Assistance Functions, Exec. Order No. 12,673, 54 Fed. Reg. 12,571 (Mar. 28, 1989).
\textsuperscript{29} 44 C.F.R. §§ 206 (2005).
\textsuperscript{30} Id. § 206.3.
\textsuperscript{31} Regarding housing matters specifically, FEMA provides affected individuals with: (1) temporary housing assistance; and (2) funding for repairs to uninsured owner-occupied residences and other residential structures. Id. § 206.117.
\textsuperscript{32} Id. § 206.203(d)(1). A "small project" has a total cost up to $35,000; a "large project" has a total cost of more than $35,000. Id. § 206.203(c).
\textsuperscript{33} Id. § 206.203(d)(2).
\textsuperscript{34} Id. § 206.203(d)(2)(iv).
\textsuperscript{35} See 44 C.F.R. § 206.44.
\textsuperscript{36} Id. § 206.44(a).
\textsuperscript{37} A typical FEMA-State Agreement includes a number of conditions, including, but not limited to, requiring a requesting state to: (1) cooperate with
under which FEMA shall provide disaster funds.\textsuperscript{38} It imposes binding obligations on FEMA, the state, and local governments in the form of legally enforceable conditions for assistance.\textsuperscript{39}

The terms and conditions of the Agreement must comply with the provisions of all applicable laws, executive orders, and regulations.\textsuperscript{40} For example, Executive Order 12,612,\textsuperscript{41} adopted by FEMA, is applicable to federal disaster relief.\textsuperscript{42} This executive order mandates that, where feasible, federal agencies consult with state and local officials before implementing an action that would limit the policymaking discretion of a state.\textsuperscript{43}

Conditions included in the FEMA-State Agreement must also be drafted to survive constitutional scrutiny. Although conditional funding provisions\textsuperscript{44} are often necessary to ensure

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\textsuperscript{38} Id. The FEMA-State Agreement: (1) identifies the incident type and period; (2) specifies types of assistance; (3) identifies key personnel; (4) lists eligible areas; (5) outlines cost sharing provisions; and (6) includes special terms and conditions. See NETWORK OF STATE HAZARD MITIGATION OFFICERS, THE DISASTER DECLARATION PROCESS 10-9 (2d ed. 2003), available at http://www.nemaweb.org/?472; see also supra note 5.

\textsuperscript{39} 44 C.F.R. § 206.44(a).

\textsuperscript{40} Id. § 206.44(b); Disaster Relief; Robert T. Stafford Disaster Relief and Emergency Assistance Act; Implementation, Etc., 54 Fed. Reg. 22,162 (May 22, 1989).


\textsuperscript{42} See 44 C.F.R. § 13.

\textsuperscript{43} See 52 Fed. Reg. 41,685; see also Disaster Assistance; Federal Assistance to Individuals and Households, 67 Fed. Reg. 61,446, 61,451 (Sept. 30, 2002). Under the executive order, agency rules must comply with the Office of Management and Budget's (OMB) "common rule," requiring the appropriate division of governmental responsibilities between the federal government and the states. See 54 Fed. Reg. 22,162. FEMA satisfied the requirements of the executive order in formulating the proposed rule that was to become 44 C.F.R. §§ 206, implementing the Stafford Act for federal disaster relief. FEMA met with a number of state representatives, and continued to consult with those representatives in the course of the development of the final rule. See 67 Fed. Reg. at 61,451.

\textsuperscript{44} Incident to the spending power, "Congress may attach conditions on the receipt of federal funds, and has repeatedly employed the power to further broad policy objectives by conditioning receipt of federal moneys upon
that grants provided under Congress' spending power\textsuperscript{45} are properly used,\textsuperscript{46} the ability to place such conditions is not unlimited.\textsuperscript{47} Generally speaking, conditions may be placed on congressional grants of federal monies if those conditions: (1) promote the general welfare; (2) are expressly stated so states unambiguously know the consequences of accepting federal funds; and (3) have some relationship to the purpose of the spending program at issue.\textsuperscript{48}

Further, in order to preserve state and local autonomy from federal encroachment,\textsuperscript{49} conditional spending provisions cannot be overly coercive on the states.\textsuperscript{50} Congress has the power, however, to encourage states to act in a particular way or to influence a state's policy decisions through incentives—for example, through conditional federal grants.\textsuperscript{51} The residents of the state retain the definitive choice about whether to comply because they can ultimately choose to decline a federal grant based on undesirable conditions.\textsuperscript{52}
Ultimately, the Supreme Court has never invalidated conditional federal spending as impermissibly impeding state autonomy. In fact, in the course of invalidating congressional efforts to directly compel states to take certain action, suggesting that such efforts are an impermissible intrusion on state autonomy, courts indicate that similar goals can be achieved constitutionally through employment of conditional spending. Modern analysis suggests that conditions need only be within the purview of congressional power, which is itself satisfied by preventing negative side effects of a proposed program.

Despite differing opinions about the necessity and utility of conditional spending, the governing rule remains that Congress has the ability to provide conditional funding to the states for, among other things, disaster relief. Additional conditions can feasibly be placed in the FEMA-State Agreement if the conditions, at minimum, follow the mandates of applicable law, like Executive Order 12,612, and the three-part constitutional test. If conditions on they must comply with unattractive funding conditions in order to receive requisite funds. Lynn A. Baker, Conditional Federal Spending and States' Rights, 574 ANNALS 104, 106-7 (2001).

54. See id.; see also New York, 505 U.S. at 166-67.
55. See Rosenthal, supra note 47, at 1133.
56. Some critics believe Congress should be confined to placing restrictions on states that it could directly mandate the states to adopt. Baker, supra note 52, at 109-10. Otherwise, some say Congress would be tempted to attach strings to its expenditures to coerce recipients into conduct Congress could not constitutionally compel through direct regulation. Rosenthal, supra note 47, at 1104.

Conversely, proponents of conditional federal spending believe a total reliance on congressional intervention would be beneficial, relieving officials at the local level of decision-making responsibilities. Peter W. Salsich, Jr., Displacement and Urban Reinvestment: A Mount Laurel Perspective, 53 U. CIN. L. REV. 333, 361 (1984). As one commentator suggests, "[N]o one is more qualified structurally and statutorily to help our nation respond to and recover from disasters [than FEMA]. FEMA has the direct line relationships with state and local governments because of grant programs and the disaster relief programs operated through the Stafford Act." Recovering After Katrina: Ensuring That FEMA is up to the Task, Testimony Before the House Committee on Transportation and Infrastructure Subcommittee on Economic Development, Public Buildings, and Emergency Management (2005) (statement of Albert Ashwood, Vice President, National Emergency Management Association), available at http://www.nemaweb.org/?1495.

57. See supra notes 41-43 and accompanying text.
58. See supra text accompanying note 48.
disaster relief funding met those base requirements, while avoiding the coerciveness proscribed by the Tenth Amendment, they could be supported.

C. Implications of Historical and Modern-Day Federal Disaster Relief Programs on Minorities and Poor Populations

1. Disaster Relief of the Past—An Entitlement Program

Congressional funding of disaster relief began in the late eighteenth and early nineteenth centuries. Concern that all persons receive equal treatment from Congress pervaded virtually every discussion of relief during that time. There was fear, however, of setting precedent that would drain the nation’s resources, a fear that resulted in the denial of many claims in the early years of disaster relief.

Concerns about precedent and equitable treatment contributed to the construction of narratives utilized in the nineteenth century, in which certain events were compensated and others were ignored. Successful appeals for relief involved sudden, unforeseeable events, a blameless petitioner, and losses implicating the federal government. The “moral innocence” of the claimant was the most frequent justification for awarding relief between 1789 and 1870.

Under this framework, poor populations affected by disaster were routinely denied relief in the formative years of the federal disaster program. “Exceptional poverty,” in which a person lost class status as a result of a disaster and was “suddenly made poor by an act of Providence,” was distinguished from “ordinary poverty.” Victims of the former were deemed blameless victims of an unfair fate who

59. See supra text accompanying notes 49-52.
60. Landis, supra note 2, at 1011.
61. Id.
62. Id.
63. For a description of what “narrative” means in this context, see id. at 1017 (“[S]udden, unforeseeable events for which the petitioner was blameless and that caused losses implicating the federal government. . . . It was . . . required that they claim to have suffered losses through no fault of their own.”).
64. Landis, supra note 2, at 1017.
65. Id.
66. Id. at 1018.
67. See id. at 1020-21.
68. Id. (citing 3 CONG. DEB. 766 (1827) (statement of Rep. Campbell)).
69. Id. at 1020-21.
should “not be held responsible for their own misfortune.” The latter individuals, on the other hand, were considered relatively indolent, with an inability to contribute to the wealth and defense of the nation through their labor.

The “blameless victim” narrative affected the ability of racial minorities to obtain disaster relief. Race historically shaped a disaster relief claimant’s ability to cross the threshold of virtuous need; African-Americans and other racial minorities have frequently been denied the role of the moral innocent—historically a requirement for disaster relief claimants.

2. Operation of Disaster Relief Under the Stafford Act

Within the past two decades, a large amount of federal relief monies have been distributed by FEMA under the Stafford Act. Qualifying disasters have included California’s Northridge Earthquake in 1994, the attack on the World Trade Center in 2001, and the hurricanes experienced in the Gulf Coast region of the United States in 2005.

a. Reconstructing New Orleans After Hurricane Katrina: A Case Study in Contemporary Federal Disaster Relief

Disaster relief rose to the forefront of our collective consciousness following a devastating natural disaster in the southern region of the United States—Hurricane Katrina. This disaster gives occasion to evaluate the effectiveness of the current federal disaster relief program.

i. Disaster Hits a Divided City

On August 29, 2005, Tropical Storm Katrina, a Category Four hurricane with winds up to 145 miles per hour, reached the central Gulf Coast of the United States.
When the storm reached New Orleans, floodwalls protecting the city's low-lying neighborhoods broke, flooding large areas of the city. Approximately 90,000 square miles of the Gulf Coast region—an area roughly the size of the United Kingdom—was affected by Hurricane Katrina. Metropolitan New Orleans bore the brunt of the storm. Residing in the area's flood zone were some 583,000 people. Eighty-six percent of the city's metropolitan population lived in areas that were in some way affected by the storm, and forty-five percent of the housing units in the metropolitan area were actually flooded.

Immediately following the hurricane, living rooms nationwide were barraged with television images of New Orleans residents climbing to their rooftops or being held in grim conditions in the New Orleans Superdome. Fifty percent of New Orleans' population lived in houses with over four feet of flood water. Thousands of modest homes in urban areas and low-lying suburbs were inundated with water, while higher-value neighborhoods, such as the French Quarter and downtown, remained relatively dry.

Given New Orleans' sharp geographic division along racial and economic lines, flooding of the city's metropolitan region disproportionately affected poor, minority renters.

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80. Id. at 16-17. New Orleans had developed areas with high concentrations of poverty. Id. at 6-7. Fewer whites lived in such areas; forty-three percent of poor blacks lived in areas of concentrated poverty, while only eleven percent of poor whites did. Gwen Filosa, Report Blames Racial, Class Divisions; New Orleans Left Its Black People, Poor at Risk, TIMES PICAYUNE (New Orleans), Oct. 13, 2005, at N2. The majority of New Orleans' poor population at the time of the hurricane was composed of racial minorities. The African-American poverty rate in New Orleans was three times higher than the white poverty rate—thirty-five percent compared with eleven percent.
According to one source: "People in New Orleans know that the class and race distinctions in the city correspond to the sea levels of the residents. The poorest are forced to endure the risks of life below sea level because that is where the most 'affordable' housing is." Citywide, minority populations constituted seventy-four percent of the flood zone population. Minorities, especially African-Americans, realized the greatest devastation because they lived in the lowest-lying, more flood-prone sections of the city. With greater means and power, the white population generally occupied the well-drained, elevated areas of New Orleans.

ii. Picking Up the Pieces: Rebuilding a Broken City

Rebuilding New Orleans is "a task of epic proportions," but New Orleans is slowly reviving as reconstruction efforts are underway. Planning started shortly after Hurricane Katrina hit. For example, the Bring New Orleans Back Commission (Commission) was formed within approximately one month, in October 2005, to make recovery recommendations to the city. The Commission's Urban Planning Committee presented an action plan in January 2006, which addressed the physical aspects of recovery and rebuilding.

Certain neighborhoods, on higher ground, have reopened

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88. BROOKINGS REPORT, supra note 77, at 15. The neighborhoods below sea level, all with high percentages of African-American residents, include the Lower Ninth Ward (ninety-eight percent black), Eastern Orleans (over eighty percent black), Audubon (eighty-six percent black), Touro (seventy-four percent black), and the French Quarter (ninety percent black). Mann, supra note 87, at 40.
89. Filosa, supra note 86.
90. BROOKINGS REPORT, supra note 77, at 13.
92. BRING NEW ORLEANS BACK, supra note 84, at foreword.
93. Id.
permanently.\textsuperscript{94} For example, the predominantly-white Lakeview district is "roaring back to middle-class life," and most Lakeview homeowners have committed to returning home.\textsuperscript{95} Conversely, in much of the Lower Ninth Ward district,\textsuperscript{96} where residents are ninety-eight percent African-American and mostly working-class, the streets remain predominantly empty.\textsuperscript{97} In May 2006, there was still no electricity, drinkable water, gas, or signs of rebuilding.\textsuperscript{98} Many residents of this district have no firm plans to return home.\textsuperscript{99}

A little more than one year after the storm, New Orleans' population was only about half of pre-Katrina figures.\textsuperscript{100} Thousands of evacuees scattered around the country are starting new lives where they are.\textsuperscript{101} This is particularly true of former residents of the neighborhoods that realized the greatest flooding, like the Lower Ninth Ward.\textsuperscript{102} These neighborhoods remain uninhabitable, debris-filled ghost towns.\textsuperscript{103} The Commission calls these heavily damaged


\textsuperscript{96} This comment will refer to this New Orleans district interchangeably as "the Lower Ninth Ward," "the Ninth Ward," and "the Lower Nine."

\textsuperscript{97} Harden, supra note 95, at A01.

\textsuperscript{98} Id.

\textsuperscript{99} Id.; see also Sloan, supra note 95, at B1.

\textsuperscript{100} Gyan, supra note 91, at 03B. Mayor C. Ray Nagin predicts, some say mistakenly, that about 300,000 people will be living in the city by the end of 2006, and that the city will realize an economic boom that will make New Orleans a "vibrant city" within three years. See id.; Ann M. Simmons, In New Orleans, "Opportunity," L.A. TIMES, May 22, 2006, at A4. The Bring New Orleans Back Commission estimates a New Orleans population of 247,000 by September 2008. BRING NEW ORLEANS BACK, supra note 84, at fig. 11.


\textsuperscript{102} See id.

\textsuperscript{103} Michelle Roberts, Nagin will focus on rebuilding city; Debris removal, new housing top priorities for his next 4-year term as New Orleans mayor, DETROIT NEWS, May 22, 2006, at 8A.
neighborhoods "Neighborhood Planning Areas." It recommends that a planning process be implemented to determine the future of these areas, but that building permits for these areas not be issued.

The Lower Nine was reopened on December 1, 2005, but only for a "look and leave" opportunity, allowing residents to salvage what they could from their damaged homes. While elevated neighborhoods permanently reopened and began rebuilding as early as September 2005, the "look and leave" status of neighborhoods like the Ninth Ward will continue indefinitely. New Orleans' mayor, C. Ray Nagin, pledges that the Lower Ninth Ward will be rebuilt. Nevertheless, tens of thousands of flooded-out homes are slated for demolition, many of them in the hard-hit Ninth Ward. Additionally, the levee system has not been fortified to withstand a Category Five storm. Many areas like the Ninth Ward cannot be rebuilt without such fortification.

Many worry that poor, African-American residents simply will not return to New Orleans. Studies show that African-American residents, especially lower-income residents from the Lower Ninth Ward and the city's public housing projects, are much more likely to take up permanent

104. BRING NEW ORLEANS BACK, supra note 84, at fig. 41.
105. Id. at figs. 53, 61.
107. Silverman, supra note 94 (stating that the following districts were opened to business owners in September 2005: Garden District, French Quarter, Central Business, and Uptown; also stating that the Algiers neighborhood was formally opened).
108. See Agence France-Presse, supra note 106.
110. Tanner, supra note 101; see also BRING NEW ORLEANS BACK, supra note 84, at 15 (reporting that "ultimately it may be necessary to demolish a large number of buildings to protect the public health and safety" in the Lower Ninth Ward).
112. Some suggest it is too risky to reconstruct these areas even after the levees have been fortified. Id.
113. Tanner, supra note 101.
residence outside of New Orleans.\textsuperscript{114} For these African-Americans, “generations-old networks of kinfolk, church folk and friends have been obliterated or transplanted to another state where distance and the cost of travel undermine their ability to come home, even for short visits.”\textsuperscript{115} Aside from travel costs, the dearth of affordable housing is also a large impediment for many evacuees wanting to return to New Orleans.\textsuperscript{116}

Alphonso Jackson, Secretary of the Department of Housing and Urban Development (HUD),\textsuperscript{117} said, “New

\begin{itemize}
\item \textsuperscript{114} Harden, supra note 95, at A01. Many moved to the Houston and Atlanta areas. \textit{Id.} More than two-thirds of the poorest New Orleans residents who fled to Houston after the hurricane plan to stay there. Allan Turner, \textit{Of Poorest Evacuees, 69% Plan to Stay}, HOUS. CHRON., Sept. 8, 2006, at A1. There are two main reasons cited for this: (1) many were renters, and the current rental situation in New Orleans is bleak; and (2) many worked in the service industry, which is still rocky in New Orleans. \textit{Id.}
\item \textsuperscript{115} Harden, supra note 95, at A01. Many middle-class whites, on the other hand, fled in their own cars and tended not to go far. \textit{Id.}
\item \textsuperscript{116} Editorial, \textit{Home Sweet Home}, TIMES-PICAYUNE (New Orleans), Sept. 20, 2006. Ginny Goldman, spokesperson for the Association of Community Organizations for Reform Now, said, “Based on an extremely slow rebuilding process in New Orleans and the shortage of affordable housing, it’s clear that people don’t have the alternative to return. People do want to go home . . . but they’re starting to lose hope.” Turner, supra note 114, at A6.
\item Among other grant programs, HUD administers the Community Development Block Grant (CDBG) Program. U.S. Department of Housing and Urban Development, Community Development Block Grant Program—CDBG, http://www.hud.gov/offices/cpd/communitydevelopment/programs/ (last visited Oct. 22, 2006). The CDBG Program administers annual grants “to develop viable communities by providing decent housing, a suitable living environment, and opportunities to expand economic opportunities, principally for low- and moderate-income persons. \textit{Id.} As of September 2006, $869 million of CDBG grants were allocated to repair units owned by small landlords in New Orleans, and $594 million of block grants were designated to create or rebuild larger rental developments in the city. Laura Maggi, \textit{LRA’s Rental Program Criticized: It’s Too Focused on Low Incomes, Bureau Says}, TIMES PICAYUNE (New Orleans),
Orleans is not going to be as black as it was for a long time, if ever again."  \textsuperscript{118} In fact, the projections indicate that the black demographic in New Orleans will decrease from two-thirds of the overall population before Hurricane Katrina, to only thirty-five to forty percent of the population following reconstruction. \textsuperscript{119} "As a practical matter, these poor folks don't have the resources to go back to our city just like they didn't have the resources to get out of our city," said Joseph Canizaro, once one of New Orleans' biggest developers and a member of the city's rebuilding commission. \textsuperscript{120} "So we won't get all those black folks back. That's just a fact. It's not what I want, it's just a fact." \textsuperscript{121}

To exacerbate this problem, some are concerned that politicians, urban planners, and developers responsible for rebuilding the city will not leave room for the poor communities in their master plan. \textsuperscript{122} Some even suggest that the disaster will be used as a glorious opportunity to engineer poverty out of New Orleans altogether. \textsuperscript{123} Some business owners and local officials, for example, were eager to replace the Ninth Ward, and other low-lying neighborhoods, with parks. \textsuperscript{124} This leads some to project that the reconstruction of...
New Orleans will become “the biggest, most brutal urban renewal project black America has ever seen.” For some, the disaster could be a once-in-a-lifetime opportunity to remake New Orleans into a “whiter and richer” city.

D. Urban Renewal—A Federal Relief Program with a Different Approach

The issue of adequately providing for displaced persons arises in contexts other than disaster relief. When individuals in urban communities are displaced as a result of governmental activity to promote redevelopment, it is also an extremely complex situation. One such governmental activity is the urban renewal project—the acquisition by public authorities of abandoned or substandard, but occupied, buildings. This comment presents an overview of urban renewal, and the provisions of its corresponding federal relief program, in order to make comparisons to the provisions of the federal disaster relief program under the Stafford Act.

1. A Socially-Conscious Relief Program

Displacement, especially during the early years of slum clearance, was a central purpose of the urban renewal program. Within approximately ten years of urban renewal’s inception in 1949, an estimated 177,000 families and over 39,000 businesses were displaced under the program.

Despite the levels of displacement inherent in the urban renewal program, however, the program is characterized by resourceful efforts to ease the displacement hardships it

125. Tanner, supra note 101; see also infra Part II.D for a discussion of urban renewal projects.
127. Salsich, supra note 56, at 339.
128. Id. at 340.
130. See ADVISORY COMM’N ON INTERGOVERNMENTAL RELATIONS, RELOCATION: UNEQUAL TREATMENT OF PEOPLE AND BUSINESSES DISPLACED BY GOVERNMENTS 15 (1965) [hereinafter ADVISORY COMM’N].
131. Id.
It is the first major program in urban areas in which the government publicly accepted responsibility for ensuring adequate available housing for those displaced by government property takings.\textsuperscript{133}

Urban renewal has a corresponding relief program to assist persons who own or live in buildings that the government seeks to restructure. Those displaced by urban renewal and similar public reinvestment activities are provided relocation assistance under the Uniform Relocation Assistance and Real Property Acquisitions Policy Act (URA).\textsuperscript{134} The URA provides assistance to qualifying displacees\textsuperscript{135} in the following forms: relocation expenses;\textsuperscript{136} advisory services for displaced renters;\textsuperscript{137} payments for affected owner-occupied dwellings;\textsuperscript{138} mortgage insurance for homeowners;\textsuperscript{139} additional monies for qualifying renters that could be used as a down payment for home purchase;\textsuperscript{140} and creation of replacement dwellings where none are available and none can be procured by the federal government.\textsuperscript{141}

2. Elements of Federal-State Coordination

The statutes governing urban renewal relief facilitate coordination between federal and local governments. The URA program is largely financed by federal funds\textsuperscript{142} and

\begin{enumerate}
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\item The URA program is largely financed by federal funds\textsuperscript{142} and
\end{enumerate}
shaped by federal laws and regulations, but conducted with considerable policy discretion by local agencies. This federal-local program places "strong emphasis on local responsibility for conceiving, planning, and carrying out renewal projects" with the federal government primarily providing financial assistance and general program direction.

3. Criticisms of the Urban Renewal Program

The urban renewal program is not without its problems. Critics of redevelopment projects voice concern that such projects are not only used to make a community more productive, but also to eliminate "undesirables"—namely poor, minority residents—from certain communities.

Frequently, housing built in renewed areas is geared toward middle- and upper-income families, beyond the financial means of the displaced residents. While the goal of the urban renewal program is to provide a decent home for every American, urban renewal is often blamed for reducing the amount of low-rent housing available to city dwellers. Regardless of the ultimate success of the urban renewal program, however, the provisions of the program provide a framework for federal-state cooperation that can be applied to federal disaster relief.

III. IDENTIFICATION OF THE PROBLEM

The federal disaster relief program, as it currently exists, places conditions on the attainment of federal funds through the FEMA-State Agreement, but these conditions do not relate to reconstruction efforts. Federal funding for

the agencies conducting projects under the URA. Id. These agencies are required to pay for a number of things under the URA, including, for example: providing relocation advisory services to displaced tenants and owner occupants, reimbursing tenants for moving expenses, and providing payments for the added cost of renting or purchasing comparable rental housing. Id.

143. ADVISORY COMM'N, supra note 130, at 15.
144. Id. at 16.
146. ADVISORY COMM'N, supra note 130, at 30.
147. BINGHAM, supra note 145, at 57.
148. See discussion supra Part II.B; see also supra note 5.
reconstruction is provided to qualifying states under the current federal disaster relief program with little federal accountability regarding reconstruction planning.\textsuperscript{149} The current procedure to qualify for a federal grant involves three steps: (1) the state submits an application for a grant with the federal government; (2) FEMA awards money in qualifying amounts; and (3) the state is subsequently left to independently formulate a reconstruction plan.\textsuperscript{150} Essentially, there is a palpable lack of federal direction in rebuilding devastated regions.

There are certainly some common sense advantages to this approach. For example, state officials are presumably best equipped to estimate the infrastructural needs of their cities and the housing requirements of their constituents. Unfortunately, poor and minority populations are often not intimately involved in local politics,\textsuperscript{151} so their interests can easily be ignored during reconstruction planning at the local level.

This concern is particularly poignant when an area, like New Orleans following Hurricane Katrina, is so devastated by disaster that reconstruction becomes a job of essentially reshaping an entire region. In such a situation, city planners and officials should consider the needs of every displaced resident. To ensure that a representative cross-section of the city's pre-disaster demographic returns to the area, affordable housing is required to accommodate displaced citizens in need of such housing.\textsuperscript{152} The current federal relief program leaves too much discretion to local officials in utilizing federal reconstruction grants. As a result, the current program provides no guarantee that poor and minority housing

\begin{itemize}
\item \textsuperscript{149} See generally 42 U.S.C. §§ 5121-5206 (2003) (containing no provisions placing reconstruction requirements on qualifying states or mandating federal review of state reconstruction plans).
\item \textsuperscript{150} See id.
\item \textsuperscript{151} "The dominant paradigm in the study of political participation over the past thirty years has emphasized socioeconomic status as the primary determinant of individuals' engagement in politics and repeatedly demonstrated that those with greater status are more likely to participate than those with lesser status." JAN E. LEIGHLEY, STRENGTH IN NUMBERS?: THE POLITICAL MOBILIZATION OF RACIAL AND ETHNIC MINORITIES 5 (2001). The key to racial and ethnic participation is political mobilization of organized groups, which may or may not exist. See id.
\item \textsuperscript{152} See generally BROOKINGS REPORT, supra note 77, at 21-23 (describing the locations of, and levels of poverty in, the city's public housing projects).
\end{itemize}
interests will be integrated into the chosen reconstruction plan.

IV. ANALYSIS

A. History Repeating—Federal Relief Programs That Fail to Affirmatively Protect Poor and Minority Interests

Disaster relief programs implemented centuries ago underrepresented poor and minority interests. In the nineteenth century, individuals deemed insufficiently “blameless”—often poor people of color—were systematically denied disaster relief. Some suggest that success in obtaining disaster relief is connected to one’s societal status—a status that is rooted in ever-changing circumstances of race and politics. Consequently, the ability of disfavored racial groups to lay claim to resources also varies over time. The current disaster relief program is certainly much improved compared to the disaster relief approach from centuries ago because it does not systematically place any group in disfavor. Despite this seeming progress, however, some suggest that racial minorities in the United States continue to have a less certain possibility of successfully obtaining relief than do white citizens.

The current federal disaster relief program lends to the perpetuation of this disparity. The Stafford Act is less pointed in its dismissal of poor and minority interests, but the provisions of the Act—and the accompanying FEMA regulations—as currently drafted could result in the discounting of certain interests. The Stafford Act leaves decisions concerning rebuilding a devastated region almost entirely to the state. As minority and impoverished populations generally lack the political clout necessary to contribute meaningfully to a reconstruction plan formulated

153. See discussion supra Part II.C.1.
154. See supra notes 67-73 and accompanying text.
155. Landis, supra note 2, at 1023.
156. Id.
157. In fact, there is a section of the Stafford Act that expressly prohibits discrimination in the administration of the disaster relief program. See 42 U.S.C. § 5151 (2003).
158. Landis, supra note 2, at 1023.
159. See supra notes 5, 149-150 and accompanying text.
at the local level,\textsuperscript{160} their interests can be tragically overlooked under the current relief program.

\textbf{B. Post-Disaster Reconstruction of New Orleans Highlights Potential Problems with the Current Disaster Relief Program}

The situation in New Orleans following Hurricane Katrina effectively demonstrates the implications of contemporary federal relief efforts. Minorities are no longer being systematically denied disaster relief—many such individuals received assistance in the wake of Hurricane Katrina.\textsuperscript{161} Seemingly equal distribution of benefits to qualified individuals, however, does not assure that the interests of each individual will be adequately represented during reconstruction efforts. There is no guarantee that state officials will consider minority interests to any notable degree when drafting a reconstruction plan.\textsuperscript{162}

The success of the reconstruction efforts in New Orleans will depend in large measure on the blueprints ultimately created by local and state officials.\textsuperscript{163} Efforts to form a reconstruction plan for the devastated city have seemingly been misguided. Many competing ideas about how the city should be rebuilt have surfaced.\textsuperscript{164}

Some suggest rebuilding New Orleans in a manner that avoids the extreme racial and economic divisions\textsuperscript{165} that existed in the city before the hurricane.\textsuperscript{166} Taking a socially-conscious approach, these commentators hope to see New Orleans rebuilt in a way that would narrow the gap between the “haves and have-nots.”\textsuperscript{167} The way to accomplish this is to racially and socio-economically integrate the city, embracing the African-American residents who gave the city much of its identity, including its food, its music, and its celebrated street life.\textsuperscript{168} Developer Joseph Canizaro\textsuperscript{169} and others envision

\begin{itemize}
\item \textsuperscript{160}See supra note 151 and accompanying text.
\item \textsuperscript{161}FEMA provided rent expenses for relocation and temporary housing units. See Josh P. Hamilton, \textit{New Orleans’ Chaotic Post-Storm Market Has Pushed Many Residents Out}, HOUS. CHRON., Nov. 27, 2005, at Bus. 3.
\item \textsuperscript{162}See supra notes 5, 151 and accompanying text.
\item \textsuperscript{163}Editorial, supra note 91.
\item \textsuperscript{164}See Filosa, supra note 86.
\item \textsuperscript{165}See supra note 86 and accompanying text.
\item \textsuperscript{166}Filosa, supra note 86.
\item \textsuperscript{167}Tanner, supra note 101.
\item \textsuperscript{168}Id.
\end{itemize}
mixed-income housing, where the poor would live in subsidized homes side-by-side with the middle class.\textsuperscript{170}

Under the current federal disaster relief program, the opposite result—a reconstruction plan that perpetuates racially- and economically-based divisions in the city\textsuperscript{171}—is a very real possibility. Affordable housing before Hurricane Katrina was concentrated in areas that endured the greatest flooding, such as the Lower Ninth Ward.\textsuperscript{172} There is currently no solid estimate for when reconstruction of these areas will be possible.\textsuperscript{173} Conversely, many neighborhoods at higher elevations are currently well into reconstruction efforts.\textsuperscript{174} If those high-lying districts are rebuilt to mirror their pre-Katrina states, they will have predominantly white residents and will be virtually devoid of affordable housing.\textsuperscript{175} Moreover, planning affordable housing solely in areas in which it was previously located—areas not scheduled for reconstruction in the foreseeable future—could delay the availability of affordable housing to New Orleans residents.\textsuperscript{176} The resulting dilemma is this—many former residents of affordable housing may be forced to permanently relocate outside of New Orleans.\textsuperscript{177}

Some fear this would be an engineered result—that the reconstruction of New Orleans will become a large urban renewal project, in the worst possible sense of the analogy.\textsuperscript{178} Reconstruction of the region could conceivably be used as an attempt to remove “undesirables” from New Orleans—namely poor and minority residents.\textsuperscript{179} A reconstruction plan that does not provide adequate affordable housing would accomplish this result, as many poorer minorities would likely be unable to return to New Orleans.

\textsuperscript{169} See supra note 120 and accompanying text.  
\textsuperscript{170} Tanner, supra note 101.  
\textsuperscript{171} See supra note 86 and accompanying text.  
\textsuperscript{172} See Tanner, supra note 101.  
\textsuperscript{173} See supra notes 97-98, 106-108 and accompanying text.  
\textsuperscript{174} See supra notes 94-95, 107 and accompanying text.  
\textsuperscript{175} The high-lying districts in New Orleans were more affluent than the lower-lying districts. See supra notes 86-89 and accompanying text.  
\textsuperscript{176} See supra text accompanying notes 106-108.  
\textsuperscript{177} See supra notes 99-101, 113-116 and accompanying text.  
\textsuperscript{178} See supra notes 123, 125-126 and accompanying text.  
\textsuperscript{179} See supra notes 125-126 and accompanying text. This concern mirrors the problems surrounding urban renewal projects themselves. See supra notes 145-147 and accompanying text.
The importance of a reconstruction plan for New Orleans that includes affordable housing in many neighborhoods, even the more affluent, is obvious.\textsuperscript{180} In order to avoid recreating the racially divided demographics of pre-disaster New Orleans,\textsuperscript{181} a thoughtful, socially-conscious reconstruction plan is required. One way to ensure this is to increase federal involvement in reconstruction planning—providing direction to states, lessening the influence of local politics, and ensuring adequate housing for all city residents.

\section*{C. Using Progressive Elements of Urban Renewal Legislation as a Guide}

One federal program related to displacement—the urban renewal program\textsuperscript{182}—includes provisions that are explicitly designed to protect poor and minority interests.\textsuperscript{183} Governed by the URA,\textsuperscript{184} the urban renewal relief program has some progressive features, making it an appropriate point of comparison for any relief program. First, the URA recognizes the racial and socio-economic implications of administering relief programs.\textsuperscript{185} Urban renewal legislation attempts to equalize the availability of relief, and affirmatively places the responsibility for program performance on the federal government.\textsuperscript{186}

Additionally, the URA makes a concerted effort toward federal and state officials working in tandem to administer the urban renewal program.\textsuperscript{187} The federal-local program emphasizes local responsibility, while recognizing the importance of federal direction in conceiving, planning, and carrying out the program.\textsuperscript{188} This federal-state coordination is not required by the Stafford Act’s reconstruction funding

\begin{itemize}
\item \textsuperscript{180} Andy Kopplin, the executive director of the Louisiana Recovery Program, is trying to create a development program to “deconcentrate poverty” with mixed-income housing that combines market-rate and various levels of subsidized housing.” Maggi, \textit{supra} note 117.
\item \textsuperscript{181} \textit{See supra} note 86 and accompanying text.
\item \textsuperscript{182} \textit{See discussion supra} Part II.D.
\item \textsuperscript{183} \textit{See discussion supra} Part II.D.1.
\item \textsuperscript{184} 42 U.S.C. §§ 4601-4655 (2003).
\item \textsuperscript{185} \textit{See id.}
\item \textsuperscript{186} \textit{See id.}
\item \textsuperscript{187} \textit{See id.}
\item \textsuperscript{188} \textit{See discussion supra} Part II.D.2.
\end{itemize}
program.\textsuperscript{189}

This is not to suggest that urban renewal projects are perfect models upon which to mirror other relief programs. Despite the additional safeguards incorporated in urban renewal statutes,\textsuperscript{190} traditionally disadvantaged populations are still negatively affected.\textsuperscript{191} Displacement disproportionately affects socially vulnerable populations—namely minorities, low-income households, and renters.\textsuperscript{192} These persons are often "priced out" of their former residences, as the renewed area is often geared toward middle- and upper-income families.\textsuperscript{193} Additionally, it is often difficult for minority residents to relocate because of the ever-present obstacle of housing discrimination, and low-income households are limited due to cost factors.\textsuperscript{194}

Despite any perceived shortcomings of the overall program, however, the progressive provisions of the legislation underlying urban renewal relief remain influential. Recent amendments to the Stafford Act suggest that Congress may be trying to incorporate provisions similar to those in the URA.\textsuperscript{195} For example, in 2001, section 5197h was added to the Act.\textsuperscript{196} This section established a program that in part designated funds to develop and promote emergency preparedness education programs for minority communities.\textsuperscript{197} This recognition of unique minority needs in disaster response validates the assertion that disaster relief legislation must include special provisions to adequately guarantee protection of minority interests. As urban renewal placed responsibility on the federal government to ensure adequate affordable housing for displacees, so too does the

\textsuperscript{189} See 42 U.S.C. §§ 5121-5206 (2003). No provisions in the Stafford Act require discussions about reconstruction between federal and state officials. Id.

\textsuperscript{190} See discussion supra Part II.D.1.

\textsuperscript{191} See discussion supra Part II.D.3.

\textsuperscript{192} See Salsich, supra note 56, at 336 n.9.

\textsuperscript{193} See supra note 146 and accompanying text.

\textsuperscript{194} See Salsich, supra note 56, at 336 n.9.

\textsuperscript{195} 42 U.S.C. §§ 4601-4655 (2003). Whether the URA was actually considered when drafting the Stafford Act is unclear from the Act's legislative histories.

\textsuperscript{196} 42 U.S.C.§ 5197h (Supp. 2005).

\textsuperscript{197} Id. § 5197h(b)(2). This section also required research to determine the status of emergency preparedness and disaster response awareness in African-American and Hispanic households in urban, suburban and rural communities. Id. § 5197h(b)(1).
Stafford Act place some level of responsibility on the federal government to educate minorities about disaster relief.

Through section 5197h, the Stafford Act added special provisions to inform minority communities about emergency preparedness and how to protect their households and communities in advance of a major disaster.198 Unfortunately, the same consideration is not present in the portions of the Act dealing with relief efforts following a major disaster.199 The Act also lacks a federal-state consultation requirement regarding reconstruction,200 which has been a positive element of the federal urban renewal program.201

V. PROPOSAL

In order to ensure that the interests of all residents in an affected area are adequately represented during reconstruction, the federal government should accept responsibility beyond providing the necessary funding. The ultimate proposal of this comment is as follows: Receipt of federal funds for the purpose of reconstruction should be made conditional on the prior establishment of a comprehensive reconstruction plan202 by the state and/or local

198. See id.
200. See supra note 189 and accompanying text.
201. See discussion supra Part II.D.2.
202. The term “comprehensive plan” is often used in the context of zoning ordinances. See, e.g., DAVID L. CALLIES ET AL., CASES AND MATERIALS ON LAND USE 39 (4th ed. 2004). It is used interchangeably with other terms: “general plan,” “city plan,” “development plan,” and “master plan.” Charles M. Haar, In Accordance with a Comprehensive Plan, 68 HARV. L. REV. 1154, 1154 n.3 (1955). The plan directs long-term physical development of a community. Id. at 1155. It “embodies information, judgments, and objectives collected and formulated by experts to serve as both a guiding and predictive force . . . [, paying] attention to the goals selected by the community from the various alternatives propounded . . . .” Id.

Proponents of comprehensive plans believe they are required to ensure consideration is given to the needs of the community as a whole. “Without [the comprehensive plan], there can be no rational allocation of land use. It is the insurance that the public welfare is being served and that zoning does not become nothing more than just a Gallup poll.” Udell v. Haas, 21 N.Y.2d 463, 469 (1968).

New Orleans has made efforts in this area. The Bring New Orleans Back Commission created a “City-Wide Coordination Plan,” including a number of elements to ensure that neighborhood and city-wide plans are consistent.
governments,\textsuperscript{203} to be submitted to and approved by federal officials. The submitted reconstruction plan should include adequate affordable housing for poor and minority renters, and such housing should ideally be dispersed throughout the region—even if affordable housing had been concentrated in limited, specified areas pre-disaster.

A. Conditional Funding

Conditional federal funding to states is a feasible endeavor.\textsuperscript{204} The FEMA-State Agreement already attaches certain requirements to federal relief funding\textsuperscript{205} and provides the mechanism to add additional conditions.\textsuperscript{206} Logistically, it would be as simple as adding additional "boiler plate" language to the Agreement, requiring a state to construct a comprehensive reconstruction proposal before receiving federal funds for reconstruction.\textsuperscript{207}

Other federal programs currently require states to create a proposal before receiving federal grants from FEMA.\textsuperscript{208} Therefore, there is not only a mechanism to attach a reconstruction plan requirement through the FEMA-State Agreement, but also an existing familiarity with reviewing such plans at a federal level.

\textsuperscript{203} BRING NEW ORLEANS BACK, supra note 84, at 16-17. The information accumulated would culminate in a "draft Master plan recommendation" to the City Planning Commission. Id. at 16.

\textsuperscript{204} In the zoning context, the power to plan a municipal region and regulate the use of land is a valid exercise of the state police power, when done for the general welfare. See Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 387 (1926). The state can delegate the planning power to the municipalities through state enabling acts. See Haar, supra note 202, at 1154. States increasingly require local government to engage in planning. See CALLIES ET AL., supra note 202, at 39-40.

\textsuperscript{205} See discussion supra Part II.B.

\textsuperscript{206} See supra note 5 and accompanying text.

\textsuperscript{207} This comment does not purport to estimate the amount of additional delay the creation of a reconstruction plan will place on the receipt of federal funds; it only discusses its utility and feasibility. It recognizes, however, that there are existing concerns that FEMA funding is already slow under the current system. See, e.g., Gyan, supra note 91, at 03B.

\textsuperscript{208} "The statutes for some programs require States to submit plans before receiving grants." 44 C.F.R. § 13.11(a) (2005). For example, the Hazard Mitigation Grant Program (HMGP), 44 C.F.R. §§ 201.1-6, 206.430-440, which seeks to lessen the impact of future natural disasters, requires states to create both a State Mitigation Plan and State HMGP Administration Plan. See id. §§ 201.4-6 (state and local mitigation plans); 206.437 (state administrative plan).
Further, the requirements of the Tenth Amendment are unlikely to affect the success of the condition. The Supreme Court has never invalidated conditional federal spending as impermissibly impeding state autonomy under the Tenth Amendment.

B. Federal-State Consultation Requirement

Any changes to the Stafford Act and/or corresponding sections of the Code of Federal Regulations should incorporate a federal-state consultation requirement. This requirement should mandate not only discussions between state and federal officials, but also the type of application and review procedure contemplated at the beginning of this section.

Federal-state consultation is not a foreign concept. Interaction between federal and state governments is mandated in urban renewal legislation, for example, and has worked well in that context. This requirement would eliminate at least some of the political pressures of local government—a process in which minorities and poor residents are less likely to be involved. Therefore, it would more adequately ensure that the housing needs of the poor and minority residents displaced by a major disaster are considered during reconstruction.

The Stafford Act already recognizes, in many of its sections, the importance of consultation with state officials. One element of the current program goes even further, requiring public comment when changes are made to programs administered by FEMA under the Act. Further, Executive Order 12,612, which applies to the federal disaster relief program, requires consultation with state governments

209. See supra notes 49-50 and accompanying text.
210. See supra note 53 and accompanying text.
211. See discussion supra Part II.D.2.
212. See supra note 151 and accompanying text.
213. One condition of receiving disaster grants under the Act is that, at the President's discretion, safe land use and construction practices be required. 42 U.S.C. § 5165(a) (2003). In that case, "adequate consultation with appropriate State and local government officials" is required. Id. § 5165a(a)(2). Also, in establishing the federal disaster relief program, the President had to consult and coordinate with states and local governments to establish criteria for approval of assistance applications. Id. § 5170c(c).
214. Id. § 5165c.
before implementing an action that would limit the policymaking discretion of the states.\textsuperscript{215} The import placed on federal and state input should be mirrored in provisions of the Stafford Act that govern reconstruction funding to states.

C. Anticipating Resistance

There will likely be resistance to increased federal involvement in state activities. It is nonetheless realistic that the proposal be implemented in a way that would meet constitutional requirements and avoid an impermissible intrusion on state autonomy.\textsuperscript{216} The proposed condition will certainly serve the “general welfare”\textsuperscript{217} as it will ensure equal treatment of city residents during reconstruction. Additionally, the condition would have the requisite relationship to the purpose of the spending program at issue.\textsuperscript{218} Congress must ensure, however, that the condition is unambiguously stated so the states are aware of the consequences of accepting federal disaster relief funds.\textsuperscript{219}

Given that additional conditions regarding reconstruction are constitutionally practicable, the federal government should use them to accept a certain level of responsibility in reconstruction planning. This would ensure that the housing needs of minorities and poor residents are not ignored in reconstruction plans created by state and local governments. Adopting some variation on the federal disaster relief conditions proposed here would be an effective way of protecting poor and minority housing interests in reconstruction.

VI. CONCLUSION

Congress and FEMA have created a federal disaster

\begin{footnotesize}
\begin{enumerate}
\item See supra notes 40-43 and accompanying text.
\item See discussion supra Part II.B.
\item See supra text accompanying note 48.
\item See supra text accompanying note 48. The purpose of the Stafford Act, and the corresponding FEMA statutes, is “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 the suffering and damage caused by disasters.” H.R. REP. NO. 100-517 (1988). Giving feedback to states regarding a required reconstruction plan would fit into this goal; it would assist state and local governments, and it would serve to alleviate the damage caused by the disaster.
\item See supra text accompanying note 48.
\end{enumerate}
\end{footnotesize}
relief program that lacks concrete requirements for federal-state interactions during the crucial period of reconstruction following a major disaster. Consequent, local politics would undoubtedly play a major role in the formation of a reconstruction plan. As minority and poor populations are least likely to be involved in the political process, their interests could be overlooked.

This is particularly troublesome in a situation like that in New Orleans after Hurricane Katrina in 2005—when a city is completely demolished by a major disaster. In such a circumstance, officials have the daunting task of rebuilding a region anew. Pre-Katrina New Orleans had a large number of minority citizens, and it is undoubtedly a difficult task to create a reconstruction plan that adequately represents the housing interests of all residents. Federal involvement should be mandated to ensure the housing interests of minority residents are not set aside during reconstruction planning at the local level.

The amendment to the current relief program under the Stafford Act and related FEMA regulations proposed by this comment depends on the utilization of the FEMA-State Agreement. Additional conditions should be included in the Agreement, making the receipt of federal funds for reconstruction conditional on the creation of an acceptable reconstruction plan for the affected region. This would facilitate federal-state interactions, and make the federal government accountable during reconstruction, so that federal disaster relief truly provides for every citizen displaced by a major disaster.

220. See supra note 5.
221. See supra note 151 and accompanying text.
222. See discussion supra Part II.B.