CRS INSIGHT

Community Disaster Loans: Homeland Security Issues in the 116th Congress

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Homeland Security Issues in the 116th Congress
This Insight is part of the *Homeland Security Issues in the 116th Congress* series, assembled to provide an introduction a broad range of issues that may come before Congress. For CRS's congressional clients, *Selected Homeland Security Issues in the 116th Congress: CRS Experts* contains a list of these Insights and CRS homeland security experts.

The Community Disaster Loan (CDL) program was developed to help local governments manage tax and other revenue shortages following a disaster. Administered by the Federal Emergency Management Agency (FEMA), CDLs provide financial liquidity to local governments through a structured loan that may be converted to grants when certain financial conditions are met. CDLs are codified in Section 417 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §5184, as amended). Modified "non-traditional" CDL programs were developed in response to Hurricanes Rita and Katrina in 2005, and CDL-type programs for Puerto Rico and the U.S. Virgin Islands (USVI) were developed following 2017's Hurricanes Harvey, Irma, and Maria.

This Insight provides an overview of traditional and non-traditional CDLs and the policy issues they may raise in the 116th Congress, particularly with regard to CDL-type instruments developed for Puerto Rico and USVI. The CDL program may be of interest to Congress given observed increases in frequency and severity of disaster events and apparent congressional interest in oversight issues related to federal disaster response in Puerto Rico and USVI.

Overview of Traditional CDLs

CDLs were first authorized in the Disaster Relief Act of 1974 (P.L. 93-288) but are defined and established in the Stafford Act (which amended the Disaster Relief Act) to help local governments manage acute tax and other revenue loss after a disaster, which could inhibit their ability to adequately serve their communities during recovery. To qualify for a traditional CDL, an applicant must be located in a presidentially declared disaster area; show substantial loss (greater than 5%) of tax and other revenues; not be in arrears on any other previous CDL loans; and be permitted to take federal loans under their respective state law. CDLs are statutorily capped at $5 million (P.L. 106-390); and are structured around underwriting criteria that account for estimated revenue losses, the local government's annual operating budget, and a disaster's economic effects. CDLs are five-year loans, extendable to 10 years at FEMA's discretion (44 C.F.R §206.367(c)), with interest rates determined by the Treasury Secretary. FEMA also issues guidance on how a CDL can be canceled, which involves submitting evidence of disaster-related operating deficits and associated revenue analyses to FEMA.

Overview of Non-Traditional CDLs

In special circumstances, Congress has authorized FEMA to administer non-traditional CDLs and CDL-type programs with different eligibility and technical requirements. Unlike traditional CDLs, these loans are not subject to the $5 million cap, and eligible areas are more geographically concentrated. For example, as part of the federal response to extensive economic damage caused by Hurricanes Katrina and Rita, Congress passed legislation in 2005 (P.L. 109-88) and 2006 (P.L. 109-234) to make approximately $1 billion available to support nearly $1.4 billion of non-traditional CDLs. While these non-traditional CDLs initially prohibited cancelation, subsequent 2007 legislation (P.L. 110-28) mandated that cancelation be allowed.

CDL-Type Program in Puerto Rico and USVI

Following Hurricanes Harvey, Irma, and Maria, Congress passed legislation (P.L. 115-72) providing funding for CDL-type loan instruments for Puerto Rico and USVI. This was not the first time territories received CDLs, with USVI receiving nearly $180 million in CDL funding after Hurricanes Hugo (1989) and Marilyn (1995) prior to the $5 million cap's enactment. However, while the 2017 loan instruments were based on CDLs defined in the Stafford Act, and appropriations were made to the same fund drawn for CDLs, the resulting program was functionally different due to significant exceptions and modifications, including:

- Territorial governments were considered municipalities for the purposes of the program;
- The $5 million cap was lifted;
- Loan recipients were allowed to receive more than one loan;
- Loans could only be canceled at the discretion of the Secretary of Homeland Security in consultation with the Secretary of the Treasury; and
- The Secretary of Homeland Security, in consultation with the Secretary of the Treasury, solely determined the "terms, conditions, eligible uses, and timing and amount" of such loans.

The CDL-type instrument's statutory ambiguities related to loan cancelation and terms were further complicated by Puerto Rico's broader fiscal crisis and the existence of a federal oversight board, as established by the Puerto Rico Oversight, Management, and Economic Stability Act of 2016 (PROMESA; P.L. 114-187; see CRS Report R44532, *The Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA; H.R. 5278, S. 2328)*, coordinated by D. Andrew Austin). Subsequent legislation in February 2018 (P.L. 115-123) required the Puerto Rican government to establish oversight board-approved recovery plans with monthly reports as a requirement for the CDL-type loan disbursement. Given this CDL-type instrument's statutory ambiguities, the constitutional limitations of territories, and the extent of disaster across the entirety of both territories, the CDL-type program raises potential questions of equity compared to federal disaster response to states, such as in the aftermath of Hurricanes Katrina and Rita, where CDL-type disaster assistance was more comprehensive and less restricted.

Potential Policy Issues for Congress

Should the rate and severity of disaster-related damages continue along recent trends or accelerate, traditional CDLs or their non-traditional analogues may be increasingly utilized for disaster response or recovery purposes. However, due to their relatively low funding cap and specialized nature, traditional CDLs may be inadequately suited to widespread and severe disaster events. However, non-traditional CDLs or CDL-type instruments may lack sufficiently defined disbursement and cancelation criteria, which potentially contribute to concerns over equity and utility.

With respect to Puerto Rico and USVI, Congress may seek to specify program terms and cancelation criteria to bring these instruments more in line with traditional CDLs, or the types used following Hurricanes Katrina and Rita. Considering the CDL program in broader terms, Congress may consider structuring CDLs more expansively to account for a wider universe of disaster and emergency scenarios, such as state- or executive agency-based disaster declarations, expanding or lifting the $5 million cap, or simplifying the loan forgiveness process. One potential alternative would be to restructure CDLs with automatic forgiveness thresholds based on predetermined triggering criteria. Congress could also develop disaster assistance instruments that separately address immediate governmental liquidity, disaster response, and long-term recovery needs.