



MEMORANDUM

January 24, 2023

To: Senator Kirsten Gillibrand
Attention: Sachin Mathur, Legislative Assistant

From: Erica A. Lee, Analyst in Emergency Management and Disaster Recovery,
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Subject: **FEMA Assistance provided for Pension and Death-related costs for 9/11 in New York**

This memorandum responds to a series of questions you posed regarding assistance from the Federal Emergency Management Agency (FEMA) for pension and death-related costs attributed to the September 11, 2001, terrorist attacks in New York. On January 10, you wrote:

“In 2002, Federal Emergency Management Administration (FEMA) reimbursed the pension systems for \$290 million for unanticipated costs of the payment of death and disability claims that resulted [from] the 9/11 attacks. FEMA denied New York State’s request at that time of an additional \$460 million in then-projected costs....”

You requested that CRS:

- Provide a summary of the action described above with reference to available documentation, including:
 - “What happened” relevant to the provision of this assistance;
 - The type and amount of assistance originally requested;
 - FEMA’s determinations regarding the eligibility and amount of requested assistance; and
 - Whether FEMA has since provided any similar payments to a state or local government.

The following memorandum provides background on FEMA assistance authorized for New York for its 9/11 response relevant to this request, including a discussion of relevant authorities, congressionally authorized flexibilities, and implementation changes. Subsequent sections detail the assistance requested, denied, and approved relevant to death benefits and pension losses for 9/11, followed by a brief discussion of any comparable obligations.

As we discussed, CRS relies on publicly available sources and does not have access to nonpublic or confidential documentation, unless provided by clients or agencies. For this reason, the information in this memorandum is limited to that which is publicly available as well as the confidential documents you provided to CRS. Further nonpublic information may be available from FEMA, New York State, New York City, or other Public Assistance (PA) Applicants that CRS could not include in this memorandum.

The confidential documents you provided to CRS for the purposes of conducting this analysis will remain confidential and will not be shared without your approval. CRS may use other information in this memorandum in other products for general distribution to Congress. Your confidentiality as a requester will be preserved if this occurs.

FEMA Public Assistance for 9/11

Background

On September 11, 2001, President George W. Bush declared a major disaster for several counties in the state of New York for the terrorist attacks earlier that day, authorizing several forms of assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act, P.L. 93-288, as amended; 42 U.S.C. §§5121 et seq.).¹ Through the declaration (DR-1391), FEMA could provide Public Assistance (PA) to eligible state, local, and tribal government entities and nonprofits (PA Applicants) in the state of New York (the PA Recipient) to cover the eligible costs attributed to the attacks for both urgent emergency response activities and the repair and replacement of eligible facilities.² President Bush amended the declaration, so that FEMA covered 100% of costs eligible for PA (rather than the standard 75%).³

Subsequently, Congress appropriated funds for FEMA's 9/11-related assistance in an exceptional way. Congress directed approximately \$8.8 billion to FEMA for 9/11 assistance *specifically* for New York's response and recovery efforts following the attacks in New York.⁴ \$8.04 billion of this went to the Disaster Relief Fund (DRF), which supports Stafford Act assistance and related operations. Almost invariably, Congress appropriates for the DRF generally, without directing funds to a specific incident or program.⁵ This was not the case with 9/11. By designating a specific amount of funds for this specific incident, Congress effectively capped DRF funding and Stafford Act assistance for 9/11 in New York.⁶

Almost eighteen months after 9/11, the Consolidated Appropriations Resolution of 2003 (P.L. 108-7) authorized FEMA to use certain funds already appropriated for 9/11 disaster relief to reimburse the state and city of New York not only for traditionally eligible PA costs, but also for costs associated with 9/11

¹ Federal Emergency Management Agency (FEMA), "New York; Major Disaster and Related Determinations," 66 *Federal Register* 48682, September 21, 2001.

² For an overview on the PA program and eligible costs, see CRS Report R46749, *FEMA's Public Assistance Program: A Primer and Considerations for Congress*, by Erica A. Lee. According to this report, the only other known instance of such an appropriation is for the COVID-19 pandemic.

³ FEMA, "New York; Amendment No. 1 to Notice of a Major Disaster Declaration," 66 *Federal Register* 49674, September 18, 2001, <https://www.federalregister.gov/documents/2001/09/28/01-24350/new-york-amendment-no-1-to-notice-of-a-major-disaster-declaration>. Subsequently, the Consolidated Appropriations Resolution of 2003 (P.L. 108-7) authorized funds for 9/11 response and recovery that the city and state of New York to cover "the non-Federal share of relevant programs."

⁴ P.L. 107-38, P.L. 107-117, and P.L. 107-206. See also GAO, *September 11: Overview of Federal Disaster Assistance to the New York City Area*, GAO-04-72, October 2003, p. 17, <https://www.gao.gov/assets/160/157488.pdf> (hereinafter GAO, *9/11 Overview*).

⁵ For more information, see CRS Report R45484, *The Disaster Relief Fund: Overview and Issues*, by William L. Painter.

⁶ See discussion of related challenges in GAO, *Disaster Assistance: Federal Aid to New York City Area Following the Attacks of September 11th and Challenges Confronting FEMA*, GAO-03-1174T, testimony before the Subcommittee on Clean Air, Climate Change, and Nuclear Safety, Committee on Environment and Public Works, U.S. Senate, September 24, 2003, pp. 22-26 (hereinafter GAO, *FEMA 9/11 Testimony*), and in U.S. Congress, Committee on Environment and Public Works, Subcommittee on Clean Air, Climate Change, and Nuclear Safety, *Review of the General Accounting Office Report on FEMA's Activities After the Terrorist Attacks on September 11, 2001*, 108th Cong., 1st sess., September 24, 2003, S.Hrg. 108-364, (hereinafter Senate Committee on Environment and Public Works, *Review of FEMA after September 11*).

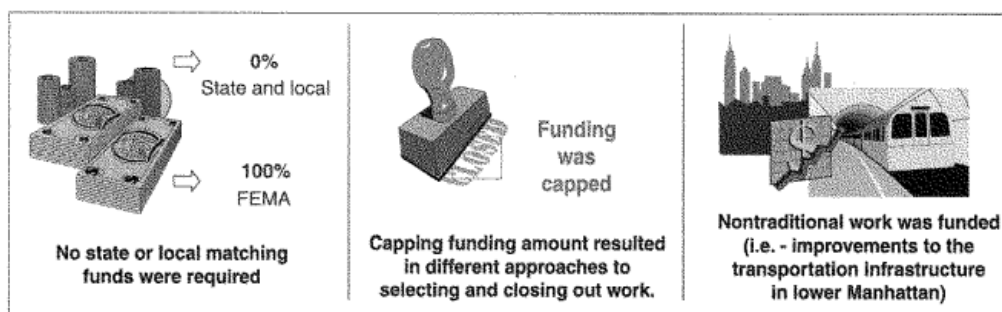
“unreimbursable under the Stafford Act.”⁷ These costs became known as 9/11 “Associated Costs.”⁸ This new authority ensured that FEMA could exhaust the DRF funds directed to New York City for 9/11 by reimbursing costs like those incurred for heightened security, which were not otherwise eligible for Stafford Act assistance.⁹ Furthermore, as a representative of the city of New York later testified, “[t]he authority to use funds for Stafford-ineligible costs was necessary because the Stafford act was not and is not designed to respond to a terrorist attack, particularly on the scale of September 11.”¹⁰

Following the enactment of the Consolidated Appropriations Resolution of 2003, FEMA established a “Dedicated Fund”, or a “Set-Aside Fund,” to cover the estimated PA project costs for both the city and the state of New York’s 9/11-related Stafford Act assistance.¹¹ FEMA, the city, and the state developed an agreement to draw down these funds and any remaining funds available from the \$8.8 billion appropriated for the incident to cover “Associated Costs.”¹²

These key modifications to the PA program implemented for New York’s 9/11 are visualized in **Figure 1**.

Figure 1. Key Differences in PA for 9/11 in New York

As visualized by the GAO



Source: U.S. Congress, Committee on Environment and Public Works, Subcommittee on Clean Air, Climate Change, and Nuclear Safety, *Review of the General Accounting Office Report on FEMA’s Activities After the Terrorist Attacks on September 11, 2001*, 108th Cong., 1st sess., September 24, 2003, S.Hrg. 108-364, p. 200.

FEMA Public Assistance – Key Authorities

In its normal course of operations, FEMA’s PA program provides financial and direct assistance to state, local, tribal, and territorial governments and eligible nonprofits for certain costs directly attributed to an emergency or major disaster declared under the Stafford Act. Costs eligible for assistance include those incurred while undertaking “emergency protective measures” – e.g., emergency evacuation, sheltering, medical care, and commodities distribution. It also assists with the cost of certain related labor and fringe

⁷ P.L. 108-7, 117 Stat. 517. The funding that was available for Associated Costs was that appropriated for the DRF for 9/11 in P.L. 107-117. See also GAO, *FEMA PA for 9/11*, pp. 5, 6, 12, 23, 27-30.

⁸ GAO, *9/11 Overview*, p. 40.

⁹ *Ibid.*, pp. 40-41.

¹⁰ Responses by New York City Office of Management and Budget representative Bud Larson to Additional Questions from Senator Jeffords, in Senate Committee on Environment and Public Works, *Review of FEMA after September 11*, p. 312.

¹¹ Submitted testimony of Joseph F. Picciano, then-Deputy Director of FEMA Region II, U.S. Congress, House Committee on Homeland Security, Subcommittee on Management, Integration and Oversight, *An Examination of Federal 9/11 Assistance to New York: Lessons Learned in Preventing Waste, Fraud, Abuse, and Lax Management*, committee print, 109th Cong., 2nd sess., August 2006, 109-C (Washington, D.C. GPO, 2006), p. 80 (hereinafter House Homeland, *Federal 9/11 Assistance*).

¹² *Ibid.*

benefits.¹³ FEMA is to provide PA in accordance with numerous restrictions established in statute, federal regulations, and agency policy.¹⁴ Those most pertinent to the PA provided for 9/11-related pension losses and death benefits include the following:

- FEMA may only provide assistance to support work “required as the result of the emergency or major disaster event.”¹⁵
- FEMA may provide PA for certain “force account labor costs,” including specific fringe benefits, directly tied to the performance of eligible disaster-related work.¹⁶

FEMA Implementation of 9/11 PA and Assistance for “Associated Costs”

The unusual appropriations for disaster relief for 9/11 in New York altered how FEMA administered Stafford Act assistance for the incident—particularly PA. Typically, a Recipient’s PA Grant and individual PA project awards are not subject to funding limitations (as long as funds are available in the DRF). Instead, assistance is only limited by eligibility parameters established in the Stafford Act, federal regulations, and FEMA policy.¹⁷ However, given the capped assistance for 9/11 and FEMA’s enhanced authorities to cover 9/11 “Associated Costs,” FEMA significantly modified the delivery of PA in this case, including PA provided for the costs of pension losses and death benefits.

The U.S. General Accounting Office (now the Government Accountability Office, GAO) issued three reports on PA program administration for 9/11 disaster assistance detailing these changes.¹⁸ As GAO explained:

Congress provided FEMA with specific appropriations for the terrorist attacks that resulted in a capped funding amount of \$8.8 billion for its efforts to aid the NYC area from the President’s pledge of at least \$20 billion in federal assistance. In consideration of funding required for its other programs (assistance for individuals impacted by the disaster and hazard mitigation grants), \$7.4 billion remained available for public assistance and public assistance-related projects. To help ensure that the amount of public assistance did not exceed this amount, FEMA asked that city and state officials prioritize their funding needs. As a result ... FEMA ... delayed a decision on funding for city and state pension actuarial losses resulting from line of duty deaths of police and fire fighters at the World Trade Center site so that officials could be certain that the costs of the project would not cause FEMA to exceed its total appropriation for the disaster.¹⁹

According to former Deputy Director of FEMA Region II Joseph Picciano, New York City, New York State, and FEMA verbally agreed to a number of terms following the enactment of the Consolidated Appropriations Resolution.²⁰ Among these was the agreement that FEMA would stop accepting costs for

¹³ PA for emergency protective measures for a major disaster are authorized at Stafford Act Section 403.

¹⁴ For further discussion, see CRS Report R46749, *FEMA’s Public Assistance Program: A Primer and Considerations for Congress*, by Erica A. Lee.

¹⁵ Current regulations at 44 C.F.R. §206.223.

¹⁶ Current regulations at 44 C.F.R. §206.228. See also FEMA, *Public Assistance Program and Policy Guide V.4*, June 1, 2020, pp. 68-72. Relevant regulations at the time of the determination of the 9/11-related pension costs and death benefits were located at 44 C.F.R Part 13, including 44 C.F.R. §13.22 – Allowable Costs.

¹⁷ An exception are awards for improved or alternate PA “permanent work” projects or projects completed under Alternative Procedures, as authorized in Section 1102 of the Sandy Recovery Improvement Act (SRIA), P.L. 113-2; as it amends Stafford Act Section 428; 42 U.S.C. §5189f, but this was not in place at the time.

¹⁸ See U.S. Government Accountability Office (GAO), *Disaster Assistance: Information on FEMA’s Post 9/11 Public Assistance to the New York City Area*, GAO-03-926, August 2003, <https://www.gao.gov/assets/240/239484.pdf> (hereinafter GAO, *FEMA PA for 9/11*); GAO, *9/11 Overview*; and GAO, *FEMA 9/11 Testimony*.

¹⁹ GAO, *FEMA PA for 9/11*, pp. 26-27.

²⁰ Submitted testimony of Joseph F. Picciano, then-Deputy Director of FEMA Region II in House Homeland, *Federal 9/11*

Stafford-eligible PA as of April 30, 2003, in order to determine how much funding remained for 9/11 “Associated Costs” as part of an expedited closeout of the PA program.²¹ Following this closeout, FEMA deducted all costs eligible for assistance under the Stafford Act from those still available for New York’s disaster recovery. FEMA allocated remaining funds to the city and the state. According to the GAO, the estimated \$1.2 billion remaining after the expedited closeout could, in general, be spent at the discretion of the city and the state of New York for other costs related to 9/11 (while abiding by federal grant management requirements).²² Possible “associated costs” included those for increased pension costs, and tourism campaigns.²³

As part of this agreement with FEMA, New York City and the state agreed that they would submit “no further appeals or time extension requests.”²⁴ According to FEMA’s testimony, these terms were documented in a Joint Letter of Agreement, dated June 2003.²⁵ Mr. Picciano explained that

“The City and State were active participants in this process because it quickly brought to a close the Stafford Act-eligible program, thereby saving the City and State considerable time and money to manage a long-term, traditional closeout, and it allowed them to promptly draw down on any remaining funds using 9/11 Associated Cost projects.”²⁶

The GAO reported that a FEMA official noted “no prior disaster had been closed out in this manner before work had been completed.”²⁷ FEMA established an expedited closeout specifically “so that any remaining funds could be used for work identified as high priorities by city and state officials in New York and... to ensure that [these] priorities are best met as quickly as possible.”²⁸

FEMA Assistance for 9/11 Pension Actuarial Losses and Death Benefits

The following sections use publicly available documentation to summarize the request and approval of PA project worksheets (PWs, documents reflecting requested and approved PA awards) relevant to 9/11-related death and disability benefits, as requested.²⁹ Please note that available documentation may not be comprehensive; other documentation unavailable to CRS may provide more complete information.

Requests for FEMA Assistance

News media, victims, state and local officials, as well as some Members of Congress expressed concern regarding compensation and death benefits for the victims of 9/11, including emergency workers.³⁰

Assistance, pp. 14-15.

²¹ Ibid.

²² GAO, *FEMA 9/11 Testimony*, pp. 12-13, 24. See also responses by JayEttta Hecker to Additional Questions from Senator Jeffords, Senate Committee on Environment and Public Works, *Review of FEMA after September 11*, p. 201, and submitted testimony of Joseph F. Picciano, then-Deputy Director of FEMA Region II in House Homeland, *Federal 9/11 Assistance*, pp. 14-15, 23.

²³ Responses by JayEttta Hecker to Additional Questions from Senator Jeffords, Senate Committee on Environment and Public Works, *Review of FEMA after September 11*, p. 154.

²⁴ Submitted testimony of Joseph F. Picciano, then-Deputy Director of FEMA Region II in House Homeland, *Federal 9/11 Assistance*, pp. 14-15.

²⁵ Ibid.

²⁶ Ibid.

²⁷ GAO, *FEMA PA for 9/11*, pp. 5-6.

²⁸ Ibid., p. 27.

²⁹ As cited in a confidential memorandum provided to CRS, publicly available copies of select PA project worksheets (PWs) are available at <https://www.911healthwatch.org/fema-public-worksheets/>.

³⁰ See, for example, Jim Dwyer and Diana Henriques, “Money for Families of Attack Victims Could Vary Widely: Death

Federal, state, and local public officials also raised concerns regarding the longer-term health effects of such work on emergency workers as well as federal assistance for related costs.³¹

According to congressional testimony by then-FEMA Region II Deputy Director Joseph Picciano, the city and the state requested approximately \$750 million for death and disability costs, including funeral costs and memorial services, lump-sum line-of-duty benefit costs, increased pension costs due to line-of-duty deaths, increased pension costs due to increased disability retirements, and leave payout.³²

FEMA Determination of Eligibility for PA

FEMA determined that some—but not all—of the requested \$750 million in assistance for death and disability costs were eligible for PA according to existing statute, regulations, and policy.³³ According to FEMA’s publicly available data and online copies of the FEMA PA project worksheets (PWs), FEMA obligated the following approximate awards, for a total of about \$279 million:³⁴

- \$64,600,000 to the New York City Office of Management and Budget for pension actuarial losses;
- \$185,800,000 for New York State for “Special Accidental” death benefits;
- \$575,000 to the New York Police Department for death benefits;
- \$26,500,000 to the New York Fire Department for death benefits; and
- \$1.55 million to New York Police Department for death benefits.

FEMA testified before Congress that “although unusual,” FEMA believed that much of the assistance requested was for the costs of performing emergency work, and thus eligible for PA. FEMA denied the eligibility of other costs for PA. CRS’s understanding of pension loss and death benefit cost requests as well as determinations of eligibility (or ineligibility) are explained separately below.³⁵

Pension Loss Costs Deemed Eligible for PA

FEMA’s PA project worksheet (PW 1491) for New York City’s Office of Management and Budget’s pension actuarial loss indicate that FEMA found such costs eligible for PA.³⁶ The PW awarded \$64.6 million dollars to the Applicant on March 12, 2003.

Benefits,” *New York Times*, September 20, 2001.

³¹ See, for example, discussion in U.S. Congress, Senate Committee on Environment and Public Works, Subcommittee on Superfund and Environmental Health, *EPA’s Response to 9/11 and Lessons Learned for Future Emergency Preparedness*, 110th Cong., 1st sess., S.Hrg. 110-1097, June 20, 2007; Senate Committee on Environment and Public Works, *Review of FEMA after September 11*; and Chan Sewell, “Line-of-Duty Death Benefits for Officer’s Work After 9/11,” *New York Times*, March 21, 2007.

³² Submitted testimony of Joseph F. Picciano, then-Deputy Director of FEMA Region II in House Homeland, *Federal 9/11 Assistance*, p. 20.

³³ Ibid.

³⁴ Figures reflect those listed in publicly available copies of PA project worksheets (PWs) 404, 947, 1491, 1492, and 1518, available at <https://www.911healthwatch.org/fema-public-worksheets/>, and as listed in “OpenFEMA, “Public Assistance Funded Projects – Details,” downloaded Jan. 17, 2023, available at <https://www.fema.gov/openfema-data-page/public-assistance-funded-projects-details-v1>. FEMA representative Joseph Picciano reported the figure to be \$291 million in House Homeland, *Federal 9/11 Assistance*, p. 20.

³⁵ Submitted testimony of Joseph F. Picciano, then-Deputy Director of FEMA Region II in House Homeland, *Federal 9/11 Assistance*, p. 20.

³⁶ FEMA, PW-01491 for DR-NY1391, available at <https://www.911healthwatch.org/files/PW1491.pdf>.

FEMA explained that the Stafford Act:

“authorizes FEMA to make contributions for the purposes of providing assistance essential to meeting immediate threats to life and property. The activities of first responders clearly fall within this authority. Expenses incurred by first responders as a direct result of a disaster event are eligible for reimbursement through FEMA’s Public Assistance program.

[...]

The Additional contribution that the city will now have to pay into the retirement systems is attributable specifically to the line-of-duty deaths of the police and fire members while performing eligible emergency work. In this way, the city’s additional contribution can be considered a death benefit paid on behalf of the member. This benefit...is remuneration for services rendered since it is a direct, immediate, and reasonable cost related to the eligible work performed by the uniform members...[t]he City’s increased contribution to the pension fund is eligible under the Public Assistance program.”

In addition to the Stafford Act, FEMA cited applicable federal regulations,³⁷ and a crossed-reference circular by the U.S. Office of Management and Budget (OMB).³⁸

FEMA specified that the project was capped, and that the \$64.6 million represented “a maximum amount...to cover increased city contributions to the pension system”:

This capped project represents the actuarial loss that was sustained by New York City due to the deaths of uniformed members. Because contributions to the pension will be made over many years and will not be separately allocated to this project, the actuarial valuation of the loss at this time will be the final amount of federal funding reimbursed for this project.³⁹

The capped project costs may have reflected the expedited closeout of PA awards, or the capped funding available for 9/11, or both.

Pension Loss Costs Deemed Ineligible for PA

FEMA’s publicly available copy of the PW for New York City’s pension losses did not reference a denial of requested assistance. However, relevant congressional testimony explained why some related costs—specifically cost-of-living adjustments (COLA) for pension losses—were believed ineligible for traditional Stafford Act assistance. JayEtta Hecker of the General Accounting Office (now the Government Accountability Office) testified before the Senate Committee on Health, Education, Labor, and Pensions that:

[t]here were lots of areas that came before the Congress where there were concerns about coverage...There were costs of COLA adjustments to pensions. The city was looking for reimbursement of that. These are nontraditional types of costs nowhere covered by the Stafford Act....⁴⁰

Bud Larson of the New York City Office of Management and Budget explained in the same hearing that:

³⁷ FEMA cited 44 C.F.R. Part 13, FEMA’s applicable grant administration regulations at the time of the obligations. FEMA has since amended these regulations to reference 2 C.F.R. Parts 200 and 3002, in accordance with the OMB. See FEMA, “Adoption of Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; States and Tribal Mitigation Planning Regulations Change,” 80 *Federal Register* 59549, October 2, 2015.

³⁸ Ibid. The referenced OMB Circular is OMB Circular A-87, since amended. See 2 C.F.R. §200.104.

³⁹ FEMA, PW-1491 for DR-NY1391, available at <https://www.911healthwatch.org/files/PW1491.pdf>.

⁴⁰ Senate Committee on Environment and Public Works, *Review of FEMA after September 11*, p. 31.

As unfortunate as it may be, we have huge additional disability costs related to this event which were not covered under the normal Stafford Act-potentially \$170 million of additional disability pension costs....But the guidelines under the Stafford Act did not permit those to be reimbursed. I think we need to expand that definition to recognize some of these issues.⁴¹

Death Benefits Costs Deemed Eligible for PA

FEMA approved four PA projects for the New York Police Department (PWs 947 and 1518), the New York Fire Department (PW 404), and the state of New York (PW 1492) to reimburse the Applicants for the costs of death benefits for emergency workers killed during the 9/11 response. To explain the eligibility of death benefits for the New York Fire Department, FEMA cited federal regulations and federal policy that specified that “allowable costs” under the PA program include “typical direct costs chargeable to federal awards,” including “compensation of employees for the time devoted and identified specifically to the performance of those awards.”⁴² FEMA explained that the reimbursed death benefits “qualif[y] as remuneration for services rendered as [they are] a direct, immediate, and reasonable cost related to the eligible work performed by the firefighters ... these costs are eligible under the Public Assistance Program.”⁴³ Similar language appeared in the approved PWs for death benefits for the New York Police Department and the state of New York.

FEMA’s PW awarding funds to the state of New York for death benefits noted the award was capped at “a maximum of \$185.8 million.” FEMA further noted that “[b]ecause contributions by the State to the Beneficiaries will be made over many years and will not be separately allocated to this project, the actuarial valuation of the loss at this time will be the final amount of federal funding reimbursed for this project.”⁴⁴ As noted with the assistance available for the city’s pension losses, the capped project costs may have reflected the expedited closeout of PA awards, or the capped funding available for 9/11, or both.

Death Benefit Costs Deemed Ineligible for PA

The PWs for 9/11-related death benefits also reflect FEMA’s finding that some costs were ineligible for PA. Specifically, the New York City Police Department requested reimbursement for \$115,823 for “accrued compensatory time and annual leave that was paid out to beneficiaries of uniformed members...killed in the line of duty.” FEMA found these costs ineligible for PA, explaining that “the unused annual leave and accrued compensatory time that was paid to the victim’s beneficiaries was not accrued during the performance of eligible work; rather, the leave time was accrued to work performed prior to the disaster.”⁴⁵

Additionally, FEMA’s documentation reflected that the state of New York requested assistance for “the present value of the benefits including an annual cost-of-living adjustment (COLA) for the benefits for a total of \$414 million.” FEMA further explained that “[w]hile the COLA is not mandated by Law, the New York State Legislature and Governor have enacted three percent increases for these benefits every year since 1978.” FEMA ultimately determined that because the COLA was legally not in place prior to the 9/11 disaster, the costs were ineligible for Public Assistance.⁴⁶

⁴¹ Ibid., p. 154.

⁴² FEMA, PW 947 for DR-1391, available at <https://www.911healthwatch.org/fema-public-worksheets/>.

⁴³ FEMA, PW 404 for DR-1391, available at <https://www.911healthwatch.org/fema-public-worksheets/>.

⁴⁴ FEMA, PW 1518 for DR-1391, available at <https://www.911healthwatch.org/fema-public-worksheets/>.

⁴⁵ FEMA, PW 947 for DR-1391, available at <https://www.911healthwatch.org/fema-public-worksheets/>.

⁴⁶ FEMA, PW 1492 for DR-1391, available at <https://www.911healthwatch.org/fema-public-worksheets/>.

In subsequent testimony, a FEMA representative also noted that “FEMA did not approve death benefit costs for City or State employees killed as a result of the disaster where it could not be reasonably demonstrated that these individuals were performing eligible emergency work.”⁴⁷

Relevant Assistance for 9/11 “Associated Costs”

Once enacted, the Consolidated Appropriations Resolution of 2003 provided FEMA authorization to cover some costs ineligible under the Stafford Act as “Associated Costs,” including cost-of-living adjustments to the pensions of survivors of firefighters and police officers killed in the line of duty, according to GAO.⁴⁸ A GAO representative explained that “...with that transfer of additional funds, the city and State now will be making the choices of [what to spend with] that remaining \$1 billion [for Associated Costs].”⁴⁹ A FEMA representative testified in 2006 that, following the obligations of certain death and disability costs for traditional PA, “FEMA reimbursed the City and State for additional death and disability costs as 9/11 Associated Costs.”⁵⁰

CRS was not able to locate copies of relevant PWs detailing the requests and approvals of assistance for such “Associated Costs” projects. However, FEMA’s publicly available data reveals several potentially relevant obligations according to the “project title” of several “Associated Costs” projects, listed below. Please note that FEMA’s publicly available data does not detail the exact nature of these obligations; FEMA may be able to provide further information.⁵¹

- PW 1529, “9/11 Associated Costs – Accidental Disability Retirement,” \$170,200,000, obligated August 21, 2003;
- PW 1535, “9/11 Associated Costs – NYPD & FDNY Comp. Time,” \$65,356,029, obligated August 21, 2003;
- PW 1538, “9/11 Associated Costs – Leave Balance Payout,” \$2,633,472, obligated July 20, 2003; and
- PW 1540, “9/11 Associated Costs – State COLA Adjustment,” \$248,900,000, obligated August 29, 2003.

Comparable FEMA Obligations

CRS was unable to locate other clear instances of FEMA obligating PA for pension losses using FEMA’s publicly available data.⁵² While CRS located approximately two dozen PA application titles that were obligated since 1998 that included a reference to “benefits” and/or “fringe benefits,” no obligations mentioned pension losses or specifically referenced death benefits aside from those made for New York’s

⁴⁷ Submitted testimony of Joseph F. Picciano, then-Deputy Director of FEMA Region II in House Homeland, *Federal 9/11 Assistance*, p. 20.

⁴⁸ GAO, *FEMA 9/11 Testimony*, p. 12.

⁴⁹ *Ibid.*, p. 31.

⁵⁰ Submitted testimony of Joseph F. Picciano, then-Deputy Director of FEMA Region II in House Homeland, *Federal 9/11 Assistance*, p. 20.

⁵¹ Data reflects the following information: “PW Number,” “Application Title,” “Federal Share Obligated,” and “Obligation Data.” OpenFEMA, “Public Assistance Funded Projects – Details,” downloaded Jan. 17, 2023, available at <https://www.fema.gov/openfema-data-page/public-assistance-funded-projects-details-v1>.

⁵² CRS searched for terms including “pension,” “benefits,” and “actuarial” in OpenFEMA, “Public Assistance Funded Projects – Details,” downloaded Jan. 17, 2023, available at <https://www.fema.gov/openfema-data-page/public-assistance-funded-projects-details-v1>.

9/11 declaration.⁵³ Please note that FEMA’s publicly available data includes varying levels of detail on PA projects. For example, some application titles may simply read “emergency protective measures,” others may read “force account costs” and others may provide significant detail on the work performed. For this reason, CRS cannot verify that historical PA obligations did not include projects for pension losses or death benefits beyond those made for 9/11.

CRS also searched historical newspaper databases and congressional sources. FEMA may be able to provide more direct information using nonpublic sources.

⁵³ Ibid. Examples of fringe benefits include “FA/LBR [likely force account/labor] (EMER) w/ fringe benefits,” and “PSS (Shelters) labor w/ fringe benefits” for Disaster No. 1541; “Emergency pay & fringe benefits” for Disaster No. 1603, and “Force Account Labor OT wages & benefits” for Disaster No. 1604. PA application titles mentioning deaths and/or fatalities that did not reference death benefits included references to coroner expenses, “indigent deaths,” and mass fatality management.

Appendix. Chronology

September 11, 2001	Following the 9/11 terrorist attack in New York, President George W. Bush declares a major disaster in New York for several counties, authorizing Public Assistance, Individual Assistance, and the Hazard Mitigation Grant Program. ⁵⁴
September 18, 2001	President Bush amends the major disaster declaration to increase the federal share of PA to 100%. ⁵⁵
December 19, 2002	FEMA obligates \$575,000 in PA for “Death Benefits” for the New York City Police Department (PW 947). ⁵⁶
February 20, 2003	President signed the Congressional Appropriations Resolution of 2003 (P.L. 108-7), allowing FEMA to provide assistance for costs “associated” with the Stafford Act.
March 2003	According to a FEMA representative, FEMA, the city of New York, and the state of New York verbally agreed to a number of terms regarding FEMA’s delivery of remaining Stafford Act and related assistance for 9/11, including the close-out of all Stafford-eligible projects by June 30, 2003, the division of remaining funds designated for 9/11 between the city and the state, and that no appeals or time extensions would be submitted. These terms were documented in a Joint Letter of Agreement in June 2003. ⁵⁷
March 12, 2003	FEMA obligates \$185.8 million to New York State for “Special Accidental Death Benefits” (PW 1492) and \$64.6 million to New York City Office of Management and Budget for “pension actuarial losses” (PW1491). ⁵⁸
April 30, 2003	FEMA begins an expedited closeout process for all PA projects eligible under the Stafford Act in order to determine funds remaining for “Associated Costs.”
June 6, 2003	FEMA obligates \$1.55 million to New York Police Department for “Death Benefits” (PW 1518). ⁵⁹
June 30, 2003	FEMA closes all PA projects eligible for traditional Stafford Act assistance. ⁶⁰
July 14, 2003	FEMA obligates \$26.5 million in PA for “Death Benefits” for the New York Fire Department (PW 404). ⁶¹
March 4, 2019	FEMA closes New York’s 9/11 major disaster declaration. ⁶²

⁵⁴ Federal Emergency Management Agency (FEMA), “New York; Major Disaster and Related Determinations,” 66 *Federal Register* 48682, September 21, 2001, <https://www.federalregister.gov/documents/2001/09/21/01-23651/new-york-major-disaster-and-related-determinations>.

⁵⁵ FEMA, “New York; Amendment No. 1 to Notice of a Major Disaster Declaration,” 66 *Federal Register* 49674, September 18, 2001, <https://www.federalregister.gov/documents/2001/09/28/01-24350/new-york-amendment-no-1-to-notice-of-a-major-disaster-declaration>.

⁵⁶ FEMA, PW 947 for DR-1391, available at <https://www.911healthwatch.org/fema-public-worksheets/>.

⁵⁷ Submitted testimony of Joseph F. Picciano, then-Deputy Director of FEMA Region II in House Homeland, *Federal 9/11 Assistance*, p. 80.

⁵⁸ FEMA, PWs 1491 and 1492 for DR-1391, available at <https://www.911healthwatch.org/fema-public-worksheets/>.

⁵⁹ FEMA, PW 1518 for DR-1391, available at <https://www.911healthwatch.org/fema-public-worksheets/>.

⁶⁰ Submitted testimony of Joseph F. Picciano, then-Deputy Director of FEMA Region II in House Homeland, *Federal 9/11 Assistance*, pp. 14-15.

⁶¹ FEMA, PW 404 for DR-1391, available at <https://www.911healthwatch.org/fema-public-worksheets/>.

⁶² Email correspondence to CRS from FEMA Office of Legislative Affairs, December 19, 2020.

March 26, 2021

Chief Actuary of the New York City Retirement Systems (NYCRS) releases a fiscal analysis of pension costs attributed to 9/11-related accidental disability retirements and accidental deaths. The analysis is “intended for the purpose of procuring federal financial assistance” from FEMA.

The analysis explains the following:

- In 2002, NYCRS requested \$64.6 million from FEMA for actuarial losses attributed to deaths of 343 fire members and 28 police members on 9/11.
- In 2003, NYCRS requested \$185.8 million from FEMA for death benefits paid to eligible beneficiaries of the members. These benefits did not include cost-of-living adjustments.
- Accidental disability retirements and accidental deaths associated with 9/11 continue.
- Accidental disability retirements and accidental deaths exceed standard benefits for members, resulting in increased liabilities for pension funds in the NYCRS.
- As of June 30, 2021, total estimated costs to NYCRS attributed to 9/11 approximate \$2.35 billion, according to a methodology detailed in the analysis that assumed 9/11 had not occurred.

April 27, 2021

The New York State and Local Retirement System (NYSLRS) writes New York State AFL-CIO Chapter in response to a request for an estimate of the costs incurred by the New York State and Local Employees Retirement System (ERS) and the New York State and Local Police and Fire Retirement System (PFRS) as a result of disability retirements and deaths attributed to 9/11. NYSLRS explains:

- NYSLRS estimates that as of March 31, 2021, total additional costs attributed to 9/11 are \$245 million.
- NYSLRS wrote that it “is unable to estimate the projected future costs” of benefits attributed to 9/11, as requested.
- NYSLRS also writes that it “has not received any FEMA grants to cover the additional costs already incurred or future costs” of 9/11-related pension and death benefits.⁶³

⁶³ Letter from New York State and Local Retirement System (NYSLRS) Executive Deputy Comptroller Colleen Gardner to New York State AFL-CIO President Mario Cilento, April 27, 2021, provided to CRS by Office of Senator Gillibrand.
