



The Disaster Recovery Reform Act: Homeland Security Issues in the 116th Congress

February 26, 2019

The Disaster Recovery Reform Act of 2018 (DRRA, Division D of P.L. 115-254), which became law on October 5, 2018, is the most comprehensive legislation on the Federal Emergency Management Agency's (FEMA's) disaster assistance programs since the passage of the Sandy Recovery Improvement Act of 2013 (SRIA, Division B of P.L. 113-2) and, previous to that, the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA, P.L. 109-295). The legislation focuses on improving predisaster planning and mitigation, response, and recovery, and increasing FEMA accountability. As such, it amends many sections of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act, 42 U.S.C. §§5121 et seq.). Generally, DRRA's amendments to the Stafford Act apply to major disasters and emergencies declared on or after August 1, 2017. Other new authorities apply to major disasters and emergencies declared on or after January 1, 2016.

Congress may consider tracking the implementation of DRRA's requirements, which include “[more than 50 provisions that require FEMA policy or regulation changes for full implementation....](#)” In addition to its reporting and rulemaking requirements—many of which include 2019 deadlines—much of DRRA's implementation is at FEMA's discretion.

This Insight provides an overview of some of DRRA's broad impacts with a few significant, illustrative provisions, and potential considerations for Congress.

Potential Investments in Preparedness, Response, and Recovery

DRRA includes provisions that have the potential to improve disaster preparedness, response, and recovery, but also to increase federal spending. For example, under the revised authority under Section 203 of the Stafford Act ([42 U.S.C. §5133](#))—Predisaster Hazard Mitigation—the President may provide financial and technical assistance by [setting aside up to 6% of the estimated aggregated amount of certain federal grant assistance](#) from the Disaster Relief Fund (DRF), including grants made pursuant to awards of Public Assistance (PA) and Individual Assistance (IA) under the Stafford Act. [Previously](#), predisaster

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mitigation was funded by discretionary annual appropriations, and financial assistance was limited by the amount available in the National Predisaster Mitigation Fund, which was separate from the DRF. Post-DRRA, predisaster mitigation has the potential to have significantly higher funding through the new set-aside from the DRF, but how this will be implemented and managed by FEMA remains uncertain.

Additionally, DRRA may significantly [increase the amount of financial assistance](#) provided under Section 408 of the Stafford Act ([42 U.S.C. §5174](#))—Federal Assistance to Individuals and Households. Prior to DRRA, an individual or household could receive up to [\\$33,300](#) (FY2017; adjusted annually) in financial assistance, [including both](#) housing assistance and other needs assistance (ONA). Post-DRRA, financial assistance for [repairs](#) and [replacement](#) of housing may not exceed [\\$34,900](#) (FY2019; adjusted annually), and [separate from that](#), financial assistance for [ONA](#) may not exceed \$34,900 (FY2019; adjusted annually). Financial assistance to [rent](#) alternate housing accommodations is [not subject to the cap](#). In the past, the maximum amount of financial assistance may have resulted in applicants with significant home damage and/or other needs having little to no remaining funding available to pay for rental assistance. Changes post-DRRA may result in increased spending on temporary disaster housing assistance and ONA.

FEMA may also pilot some provisions of the DRRA, as it has done with regard to management costs incurred in the administration of the [PA Program](#) and the [Hazard Mitigation Grant Program \(HMGP\)](#). Following the passage of DRRA, the [PA management cost reimbursement rate](#) increased to 12% of the total grant award; 7% may be used by the grantee, and 5% by the subgrantee. [Previously, PA management costs](#) were capped at 3.34% for major disasters and 3.90% for emergency declarations. Additionally, the [HMGP management cost reimbursement rate](#) increased to 15% of the total grant award; 10% may be used by the grantee, and 5% by the subgrantee. [Previously, HMGP management costs](#) were capped at 4.89% for major disasters. In addition, prior to DRRA, there was not a pass-through requirement for subgrantees to receive a percentage of management costs.

Limitations on the Ability to Recoup Funding

A number of DRRA provisions may restrict FEMA's ability to recoup assistance, and the retroactive implementation of these provisions may be of interest to Congress. For example, FEMA may [waive a debt](#) owed by an individual or household if distributed in error by FEMA and if its collection would be inequitable, provided there was no fault on behalf of the debtor. Additionally, with regard to Section 705 of the Stafford Act ([42 U.S.C. §5205](#))—Disaster Grant Closeout Procedures—DRRA amends the statute of limitations on FEMA's ability to recover assistance. No administrative action to recover payments may be initiated "[after the date that is 3 years after the date of transmission of the final expenditure report for project completion as certified by the grantee.](#)" Prior to the passage of DRRA, the statute of limitations applied to the final expenditure report for the disaster or emergency. This is a significant change because it may take years to close all of the projects associated with a disaster. Previously, it was possible to recoup funding from projects that may have been completed and closed years prior to FEMA's pursuit of funding because the disaster was still open.

Increased Agency Accountability and Transparency

DRRA includes reporting requirements that may influence decisionmaking regarding future disaster response and recovery. The earliest reports were [due not later than 90 days after DRRA's enactment](#) (thus a deadline of January 3, 2019). Some provisions also include [briefings](#) ahead of the reporting deadline. In addition to FEMA, other federal entities are assigned responsibilities (e.g., the Office of Inspector General for the Department of Homeland Security, which was [required to initiate an audit](#) of certain FEMA contracts by November 4, 2018).

Potential Considerations for Congress

In general, among other options, Congress may consider whether to

- evaluate if FEMA’s implementation of provisions fulfills congressional intent;
- review the effectiveness and impacts of FEMA’s DRRA-related regulations and policy guidance; or
- assess the effects of DRRA-related changes to federal assistance for past and future disasters.

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