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The Disaster Recovery Reform Act of 2018 (DRRA): A Summary of Selected Statutory Provisions

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SUMMARY

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The Disaster Recovery Reform Act of 2018 (DRRA): A Summary of Selected Statutory Provisions

The Disaster Recovery Reform Act of 2018 (DRRA, Division D of P.L. 115-254) was enacted on October 5, 2018. DRRA is the most comprehensive reform of 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 the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA, P.L. 109-295). DRRA focuses on improving pre-disaster 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, P.L. 93-288, as amended; 42 U.S.C. §§5121 et seq.) and also includes new standalone authorities. In addition, DRRA requires reports to Congress, rulemaking, and other actions.

This report provides an overview of selected sections of DRRA that significantly change the provision of services or authorities under the Stafford Act, and includes:

- an overview of programs as they existed prior to DRRA's enactment, and how they were modified following DRRA;
- the context or rationale for program modifications or changes to disaster assistance policies following DRRA's enactment;
- potential considerations and issues for Congress;
- a table of amendments to the Stafford Act following DRRA's enactment; and
- tables of deadlines associated with DRRA's reporting, rulemaking and regulations, and other implementation actions and requirements.

This report does not specifically address every section included in DRRA, nor does it address every subsection or paragraph of those DRRA sections which are addressed herein.

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Introduction

Numerous natural disasters—including the 2017 hurricane season and devastating wildfires in California—served as catalysts for significant recent changes in federal emergency management policy. Most of these policy changes were included in the Disaster Recovery Reform Act of 2018 (DRRA), which was included as Division D of the FAA Reauthorization Act of 2018 (P.L. 115-254). DRRA is the most comprehensive reform of 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 the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA, P.L. 109-295).

As with past disaster legislation, lessons learned following recent disasters revealed areas that could be improved through legislative and programmatic changes, including the need for increased preparedness and pre-disaster mitigation. The legislative intent of DRRA includes improving disaster preparedness, response, recovery, and mitigation, including pre-disaster mitigation; clarifying assistance program eligibility, processes, and limitations, including on the recoupment of funding; and increasing FEMA's transparency and accountability.[1] Thus, DRRA amends many sections of 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.), which provides the authority for the President to issue declarations of emergency and major disasters, and provides a range of federal assistance to local, state, territorial, and Indian tribal governments, as well as certain private nonprofit organizations, and individuals and families.[2] In addition to numerous amendments to the Stafford Act, DRRA includes new standalone authorities, and requires reports to Congress,[3] rulemaking, and other actions.[4]

This report is structured to first provide a tabular overview of the major changes that DDRA made to the Stafford Act (see **Table 1**). The report then provides detailed explanations of the programmatic and procedural modifications to various disaster assistance programs under DRRA. These DRRA modifications are grouped in the following sections: preparedness; mitigation; public assistance; individual assistance; flood plain management and flood insurance; and other provisions. In addition to a description of DRRA's changes to programs, each section includes potential policy considerations for Congress. **Appendix A** includes the following tables of deadlines associated with DRRA's reporting, rulemaking/regulatory, and other implementation actions and requirements: **Table A-1**, DRRA Reporting Requirements (i.e., reports to Congress); **Table A-2**, DRRA Rulemaking and Regulations Requirements; and **Table A-3**, DRRA Guidance and Other Required Actions. A table of common acronyms used throughout this report is also

[1] U.S. Congress, House Committee on Transportation and Infrastructure, *Disaster Recovery Reform Act: Summarizing Division D of H.R. 302, as amended*, 115th Cong, last accessed December 2018. This document is no longer available online, but copies may be requested by contacting CRS.

[2] 42 U.S.C. §5122 defines terms used throughout the Stafford Act, including "local government"; "state," which includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands; "Indian tribal government"; and "private nonprofit facility."

[3] Examples include requirements for the FEMA Administrator to review program processes or progress in completing tasks and reporting specific information to the House and Senate committees of jurisdiction (e.g., see DRRA Sections 1245—Review of Assistance for Damaged Underground Water Infrastructure, and 1242—FEMA Updates on National Preparedness Assessment); and requirements for the Inspector General of the Department of Homeland Security to conduct audits and report on audit findings and recommendations (e.g., see DRRA Section 1226—Inspector General Audit of FEMA Contracts for Tarps and Plastic Sheeting).

[4] While most of DRRA's amendments to the Stafford Act apply to major disasters and emergencies declared on or after August 1, 2017, some provisions have earlier implementation dates. Additionally, other new authorities apply to major disasters and emergencies declared on or after January 1, 2016, but some have other implementation dates. See specific sections for implementation dates.

included in **Table B-1** of **Appendix B**. Finally, a brief legislative history of DRRA is included in **Appendix C**.

Report Limitations and Caveats

The following limitations and caveats apply to this report:

- this report summarizes selected provisions enacted in DRRA, but it does not address every DRRA subsection or paragraph. Instead, the focus of this report is on DRRA's far-reaching and potentially permanent changes in federal emergency management policy;
- this report does not organize the DRRA provisions in numerical order. Rather, they are consolidated by the program or policy subject affected by the provisions;
- where possible, the report provides background information on relevant policy areas for added context; and
- the information included in the three tables of deadlines associated with DRRA implementation (i.e., **Table A-1**, **Table A-2**, and **Table A-3**) may be subject to change because of subsequent administrative actions or at the discretion of Congress, and the tables may not be up to date following the publication of this report.

Table 1. Major Disaster Recovery Reform Act (DRRA) Changes to the Stafford Act

DRRA Section *(Stafford Act Section)*	**Significant Change(s)**	**Possible Impact(s)**
Section 1214. Private Nonprofit Facility *(Section 102(II)(B)—Definitions, Private, Nonprofit Facility)*	Adds food banks to the list of private nonprofit facilities that are eligible for FEMA assistance	May help clarify that food banks are eligible to receive assistance, and ensure food banks are used as resources to support disaster survivors.
Section 1227. Relief Organizations *(Section 309—Use and Coordination of Relief Organizations)*	Specifies that the personnel and facilities of long-term recovery groups and domestic hunger relief organizations may be used to provide relief and assistance, and allows the President to enter into agreements with such organizations for the federal government to coordinate disaster relief activities	May help clarify that long-term recovery groups and domestic hunger relief organizations are eligible to provide assistance following a disaster
Section 1235(a). Additional Mitigation Activities *(Section 404(a)—Hazard Mitigation)*	Expands eligibility for hazard mitigation funding by allowing the President to contribute up to 75% of the cost of hazard mitigation measures he or she determines are cost effective and which increase resilience	May shift priorities toward activities to increase resilience by allowing additional contributions to increase resilience
Section 1204. Wildfire Prevention *(Section 420—Fire Management Assistance)*	Allows Hazard Mitigation Grant Program (HMGP) assistance to be provided for Fire Management Assistance Grant (FMAG) declarations	May allow hazard mitigation assistance to be provided to areas affected by wildfires, even absent a major disaster declaration, which may increase funding for mitigation

DRRA Section *(Stafford Act Section)*	**Significant Change(s)**	**Possible Impact(s)**
Section 1234. National Public Infrastructure Pre-Disaster Hazard Mitigation *(Section 203—Pre-Disaster Hazard Mitigation)*	Allows the President to set aside funding for pre-disaster mitigation from the Disaster Relief Fund (DRF), with respect to each major disaster, an amount equal to 6% of the estimated aggregate amount of the grants to be made pursuant to Stafford Act Sections 403—Essential Assistance; 406—Repair, Restoration, and Replacement of Damaged Facilities; 407—Debris Removal; 408—Federal Assistance to Individuals and Households; 410—Unemployment Assistance; 416—Crisis Counseling Assistance and Training; and 428—Public Assistance Program Alternative Procedures	May result in significantly increased funding from the 6% transfer from the DRF, but this may also be a relatively small amount in years without a lot of large disasters; may encourage the adoption and enforcement of the most current building codes
Section 1207. Program Improvements *(Section 428—Public Assistance Program Alternative Procedures)*	Prohibits the conditioning of federal assistance under Section 428—Public Assistance Program Alternative Procedures on the election of an eligible entity to participate; requires cost estimates that are certified by a professionally licensed engineer and accepted by FEMA to be presumed to be reasonable and eligible costs	May remove the ability for FEMA to impose conditions on the use of Section 428—Public Assistance Program Alternative Procedures; may remove FEMA's ability to make case-by-case determinations regarding reasonable and eligible costs, including after approval
Section 1211. State Administration of Assistance for Direct Temporary Housing and Permanent Housing Construction *(Section 408(f)—Federal Assistance to Individuals and Households, State Role)*	Allows states to administer Direct Temporary Housing Assistance and Permanent Housing Construction, in addition to Other Needs Assistance (ONA); provides a mechanism for state and local units of government to be reimbursed for locally-implemented housing solutions	May allow states to customize disaster housing solutions, and may expedite disaster recovery
Section 1212. Assistance to Individuals and Households *(408(h)—Federal Assistance to Individuals and Households, Maximum Amount of Assistance)*	Separates the cap on the maximum amount of financial assistance eligible individuals and households may receive for housing assistance and ONA, removes rental assistance from the cap, and creates an exception for accessibility-related costs	May better meet the recovery-related needs of individuals and households who experience significant damage to their primary residence and personal property as a result of a major disaster; may expand financial assistance eligibility for individuals with disabilities; may increase financial assistance related to disaster housing and ONA; may disincentivize sufficient insurance coverage
Section 1213. Multifamily Lease ad Repair Assistance *(Section 408(c)(1)(B)—Federal Assistance to Individuals and Households, Direct Assistance)*	Expands the eligible areas for multifamily lease and repair, and removes the requirement that the value of the improvements or repairs not exceed the value of the lease agreement	May increase housing options for disaster survivors

DRRA Section *(Stafford Act Section)*	**Significant Change(s)**	**Possible Impact(s)**
Section 1216(c). Flexibility *(Section 705—Disaster Grant Closeout Procedures)*	Establishes a project-by-project statute of limitations on FEMA's ability to recoup Public Assistance funding	May ease the administrative and financial burden that the management of disaster recovery programs places on state, territorial, and Indian tribal governments; may ease FEMA's administrative and financial burden; may result in the federal government not recouping funding
Section 1219. Right of Arbitration *(Section 423—Appeals of Assistance Decisions)*	Adds a right of arbitration for decisions regarding an applicant's eligibility for or amount of assistance	May expedite dispute resolution and disaster recovery; may increase costs for administering appeals

Source: Disaster Recovery Reform Act (DRRA), Division D of P.L. 115-254; Stafford Act, P.L. 93-288, as amended; 42 U.S.C. §§5121 et seq.

Preparedness[5]

Section 1208: Prioritization of Facilities

DRRA Section 1208 requires the FEMA Administrator to provide guidance and annual training to state, local, and Indian tribal governments; first responders; and utility companies on

- the need to prioritize assistance to hospitals, nursing homes, and other long-term health facilities to ensure they remain functioning, or return to functioning as soon as possible, during power outages related to natural hazards and severe weather;
- how these medical facilities should prepare for power outages related to natural hazards and severe weather; and
- how local, state, territorial, and Indian tribal governments; first responders; utility companies; and these medical facilities should develop a strategy to coordinate and implement emergency response plans.[6]

Recent hurricanes have caused power outages affecting millions of individuals, including those in medical care facilities. For example, following Hurricane Harvey, 200,000 people lost power in south-east Texas. Additionally, in Florida, after Hurricane Irma made landfall, 4 million people lost power and failed air conditioning at a nursing home led to 11 deaths.[7] DRRA Section 1208 may result in medical care facilities being better prepared for power outages and help mitigate the damage (and potential deaths) associated with power outages.

[5] This section authored by Shawn Reese, Analyst in Emergency Management and Homeland Security Policy, Government and Finance Division, Federalism and Emergency Management Section.

[6] §1208(1)-(3) of DRRA, P.L. 115-254.

[7] "Turning the Lights Back On After Hurricane Harvey," *Power Technology*, November 7, 2017, https://www.power-technology.com/features/turning-lights-back-hurricane-harvey/.

Section 1209: Guidance on Evacuation Routes

DRRA Section 1209 requires the FEMA Administrator, in coordination with the Administrator of the Federal Highway Administration (FHWA), to develop and issue guidance for state, local, and Indian tribal governments in identifying evacuation routes. Specifically, the FEMA Administrator is to revise existing guidance, or issue new guidance, on these evacuation routes.

The FEMA Administrator, in developing this guidance, is to consider

- whether these evacuation routes have resisted disaster impacts and recovered quickly from disasters;
- the need to evacuate special needs populations;[8]
- information sharing and public communications with evacuees;
- sheltering evacuees, including the care, protection, and sheltering of their animals;
- the return of evacuees to their homes;
- other issues or items the Administrator considers appropriate;
- methods that assist evacuation route planning and implementation;[9]
- the ability of the evacuation routes to manage contraflow operations;
- the input of federal land management agencies where evacuation routes may cross or go through public land; and
- such other issues or items the FHWA Administrator considers appropriate.

Section 1209 also states that the FEMA Administrator may, in coordination with the FHWA Administrator and local, state, territorial, and Indian tribal governments, conduct a study of the adequacy of available evacuation routes, and submit recommendations on how to assist with anticipated evacuation flow.[10]

Currently, FHWA uses various tools and technology for hurricane modeling, information sharing, and transportation (evacuation) modeling and analysis.[11] DRRA Section 1209 codifies practices that FEMA and FHWA currently employ to address evacuation route planning and implementation of evacuations.

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[8] This section states that "special needs populations" to be considered include individuals with physical and mental disabilities; individuals in schools, daycare centers, mobile home parks, prisons, nursing homes and other long-term care facilities, and detention centers; individuals with limited-English proficiency; the elderly; and individuals who are tourists, seasonal workers, or homeless.

[9] Assistance methods and considerations include the route's ability to withstand disaster impact risks, to improve durability, and provide long-term cost savings.

[10] §1209 of DRRA, P.L. 115-254.

[11] U.S. Department of Transportation (DOT), Federal Highway Administration (FHWA), *Catastrophic Hurricane Evacuation Plan Evaluation: A Report to Congress*, Washington, DC, June 1, 2006, Appendix F, https://www.fhwa.dot.gov/reports/hurricanevacuation/appendixf.htm; DOT, FHWA, *Using Highways During Evacuation Operations for Events with Advance Notice: Routes to Effective Evacuation Planning Primer Series*, December 2006, https://ops.fhwa.dot.gov/publications/evac_primer/primer.pdf; DOT, FHWA, *Using Highways for No-Notice Evacuations: Routes to Effective Evacuation Planning Primer Series*, November 2007, https://ops.fhwa.dot.gov/publications/evac_primer_nn/primer.pdf.

Section 1236: Guidance and Training by FEMA on Coordination of Emergency Response Plans

DRRA Section 1236 requires the FEMA Administrator, in coordination with other relevant agencies, to provide annual guidance and training on coordination of emergency response plans to local, state, territorial, and Indian tribal governments; first responders; and hazardous material storage facilities. Specifically, the annual guidance and training shall include:

- a list of required equipment for a release of hazardous substances and material;
- an outline of health risks associated with exposure to hazardous substances and materials; and
- published best practices for mitigating damage, and danger, to communities from hazardous materials.

This required annual guidance and training is to be implemented not later than 180 days after DRRA's enactment (i.e., by April 3, 2019).[12] Prior to DRRA and presently, the U.S. Department of Homeland Security (DHS) provides hazardous materials information from myriad sources, such as universities and other local and federal agencies. The available information includes procedures and resources for responding to different types of hazardous material releases, independent study training courses, and several resources related to medical management for chemical exposures, but the information is broadly distributed and may not be quickly accessible when responding to a hazardous materials incident.[13] DRRA Section 1236 adds not only the plan coordination training requirement, but also requires the development of resources that may streamline information that can be incorporated into emergency response plans, such as the list of required equipment and health risks.

Mitigation

Section 1234: National Public Infrastructure Pre-Disaster Hazard Mitigation[14]

DRRA Section 1234 authorizes the National Public Infrastructure Pre-Disaster Mitigation Fund (NPIPDM), which allows the President to set aside 6% from the Disaster Relief Fund (DRF) with respect to each major disaster, establishes limitations on the receipt of pre-disaster hazard mitigation funding, and expands the criteria considered in awarding mitigation funds.

Pre-Disaster Mitigation (PDM) funding is authorized by Stafford Act Section 203—Pre-Disaster Hazard Mitigation,[15] with the goal of reducing overall risk to the population and structures from future hazard events, while also reducing reliance on federal funding from future disasters.[16] For

[12] §1236 of DRRA, P.L. 115-254.

[13] U.S. Department of Homeland Security (DHS), *Hazardous Materials Release*, Washington, DC, last published May 4, 2018, https://www.dhs.gov/hazardous-materials-release.

[14] This section authored by Diane P. Horn, Analyst in Flood Insurance and Emergency Management, Government and Finance Division, Federalism and Emergency Management Section.

[15] 42 U.S.C. §5133.

[16] Federal Emergency Management Agency (FEMA), *Hazard Mitigation Assistance Guidance*, February 27, 2015, p. 4, https://www.fema.gov/media-library-data/1424983165449-38f5dfc69c0bd4ea8a161e8bb7b79553/

FY2019, the PDM program is funded through the DRF.[17] Pre-DRRA, the amount available for PDM was appropriated separately on an annual basis, and financial assistance was limited by the amount available in the National Pre-Disaster Mitigation Fund. FEMA awarded PDM grants competitively, and 56 states and jurisdictions, as well as federally-recognized Indian tribal governments, were eligible to apply. Local governments, including Indian tribes or authorized tribal organizations, were required to apply to their state/territory as subapplicants. In FY2018, each state, jurisdiction, and tribe was eligible for a baseline level of financial assistance in the amount of the lesser of 1% of appropriated funding, or $575,000, although additional funding could be awarded competitively.[18] No applicant was eligible to receive more than 15% of the appropriated funding.[19] In FY2018, FEMA set aside 10% of the appropriation for federally recognized tribes.[20] FEMA sets priorities annually for the competitive PDM funding, with priority given to applicants that have little or no disaster funding available through the Hazard Mitigation Grant Program (HMGP).[21] In FY2018, FEMA awarded $235.2 million in PDM funding.[22]

DRRA authorizes the NPIPDM, for which the President may set aside from the DRF, with respect to each major disaster, an amount equal to 6% of the estimated aggregate amount of the grants to be made pursuant to the following sections of the Stafford Act:

- Section 403—Essential Assistance;
- Section 406—Repair, Restoration, and Replacement of Damaged Facilities;
- Section 407—Debris Removal;
- Section 408—Federal Assistance to Individuals and Households;
- Section 410—Unemployment Assistance;
- Section 416—Crisis Counseling Assistance and Training; and
- Section 428—Public Assistance Program Alternative Procedures.[23]

The amount set aside for PDM shall not reduce the amounts otherwise available under the sections above.[24] Funding from the NPIPDM may be used to provide technical and financial mitigation assistance pursuant to each major disaster. An additional clause in DRRA provides that NPIPDM funds may be used "to establish and carry out enforcement activities and implement the latest published editions of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant designs and establish minimum acceptable criteria for the design, construction, and maintenance of residential structures and facilities that may be eligible for assistance under this Act.... "[25]

HMA_Guidance_022715_508.pdf.

[17] For more information on the Disaster Relief Fund (DRF), see CRS Report R45484, *The Disaster Relief Fund: Overview and Issues*, by William L. Painter.

[18] 42 U.S.C. §5133(f)(2)(A).

[19] 42 U.S.C. §5133(f)(2)(B).

[20] FEMA, *National Pre-Disaster Mitigation Fund*, Fiscal Year 2017 Report to Congress, Washington, DC, September 1, 2017, p. 2, https://www.dhs.gov/sites/default/files/publications/FEMA%20-%20National%20Pre-Disaster%20Mitigation%20Fund.pdf.

[21] FEMA, *National Pre-Disaster Mitigation Fund*, p. 2.

[22] FEMA, *FY2018 Pre-Disaster Mitigation (PDM) Grant Program Fact Sheet*, pp. 1-4, last updated October 3, 2018, https://www.fema.gov/media-library/assets/documents/168111.

[23] 42 U.S.C. §5133(i)(1).

[24] 42 U.S.C. §5133(i)(3).

[25] 42 U.S.C. §5133(e)(1)(iv).

The changes to PDM funding in DRRA may increase the focus on funding public infrastructure projects that improve community resilience before a disaster occurs, though FEMA has the discretion to shape the program in many ways. There is potential for significantly increased funding post-DRRA through the new transfer from the DRF, but it is not yet clear how FEMA will implement this new program.

In the Consolidated Appropriations Act, 2019 (P.L. 116-6), Congress made $250 million available for PDM for FY2019, which may be merged with funds for the NPIPDM once it is fully implemented. The FY2019 PDM program will be the last PDM cycle before the rollout of the new DRRA Building Resilient Infrastructure and Communities (BRIC) Program. FEMA has authority to operate the legacy PDM program for FY2019, after which BRIC will replace the current PDM program. Funding not used in FY2019 will remain for the first year of BRIC, which will likely begin in FY2020. PDM projects already in progress will continue through closeout under the current PDM guidance. Any unobligated PDM funds may be rolled into a "carryover PDM" funding account which could be used for obligations of PDM projects underway when BRIC is implemented. Once BRIC is fully implemented, legacy PDM funds may be merged with BRIC funds, which may then be used for both PDM and BRIC work.[26]

FEMA is in the process of determining how funds under the 6% set-aside will be allocated to local, state, territorial, and Indian tribal governments.[27] FEMA expects that BRIC will be funded entirely by the 6% set-aside; however, nothing prohibits Congress from appropriating additional funds for the program. FEMA anticipates setting aside the full 6% estimate from each major disaster declaration within 180 days after declaration.[28] Based on the recent funding trends of the DRF, FEMA assumes that it would be a rare circumstance in which there is no set-aside.[29]

Other provisions in DRRA Section 1234 establish that mitigation funds under Stafford Act Section 203[30] would only be provided to states which had received a major disaster declaration in the past seven years, or any Indian tribal governments located partially or entirely within the boundaries of such states.[31] Other provisions would expand the criteria to be considered in awarding mitigation funds, including the extent to which the applicants have adopted hazard-resistant building codes and design standards, and the extent to which the funding would increase resiliency.

Section 1235(a): Additional Mitigation Activities[32]

DRRA Section 1235(a) amends Stafford Act Section 404(a)—Hazard Mitigation to include a provision authorizing the President to contribute up to 75% of the cost of hazard mitigation measures which the President has determined are cost effective and which increase resilience to future damage, hardship, loss, or suffering in any area affected by a major disaster. The pre-DRRA language only authorized funding for hazard mitigation measures which substantially reduce risk.

[26] Email correspondence from FEMA Congressional Affairs staff, April 15, 2019.

[27] Email correspondence from FEMA Congressional Affairs staff, March 13, 2019.

[28] Email correspondence from FEMA Congressional Affairs staff, April 15, 2019.

[29] Email correspondence from FEMA Congressional Affairs staff, April 15, 2019.

[30] 42 U.S.C. §5133.

[31] 42 U.S.C. §5133(g).

[32] This section authored by Diane P. Horn, Analyst in Flood Insurance and Emergency Management, Government and Finance Division, Federalism and Emergency Management Section.

DRRA does not include definitions of reducing risk or increasing resilience. However, DRRA Section 1235(d) requires FEMA to issue a rulemaking defining the terms *resilient* and *resiliency*, and although these definitions relate to Stafford Act Section 406—Repair, Restoration, and Replacement of Damaged Facilities, FEMA may consider using these definitions for mitigation activities as well.

Section 1205: Additional Activities[33]

DRRA Section 1205 amends Stafford Act Section 404—Hazard Mitigation[34] by adding a section to allow recipients of hazard mitigation assistance provided under this section and Section 203—Pre-Disaster Hazard Mitigation[35] to use the funding to conduct activities to help reduce the risk of future damage, hardship, loss, or suffering in any area affected by a wildfire or windstorm. The section includes a nonexclusive list of wildfire and windstorm mitigation activities that are eligible for funding. These activities were eligible for funding pre-DRRA, but this section is intended to clarify eligible uses of funding under FEMA's hazard mitigation grant programs.[36]

Section 1217: Additional Disaster Assistance[37]

DRRA Section 1217 amends Section 209(c)(2) of the Public Works and Economic Development Act of 1965[38] such that, when assistance is given to communities whose economy has been injured by a major disaster or emergency and which have received a major disaster or emergency declaration under the Stafford Act, the Secretary of Commerce may encourage hazard mitigation if appropriate. The Public Works and Economic Development Act of 1965 did not have any previous mention of mitigation; however, this provision does not give the Secretary any additional tools by which to encourage hazard mitigation.

Section 1204: Wildfire Mitigation[39]

Section 1204 of DRRA amends Stafford Act Sections 420—Fire Management Assistance and 404(a)—Hazard Mitigation[40] to include HMGP for Fire Management Assistance Grant (FMAG) declarations. The Stafford Act authorizes three types of declarations that provide federal assistance to states and localities: (1) FMAG declarations, (2) emergency declarations, and (3) major disaster declarations. FMAGs provide federal assistance for fire suppression activities.

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[33] This section authored by Diane P. Horn, Analyst in Flood Insurance and Emergency Management, Government and Finance Division, Federalism and Emergency Management Section.

[34] 42 U.S.C. §5170c.

[35] 42 U.S.C. §5133.

[36] U.S. Congress, House Committee on Transportation and Infrastructure, *Report to Accompany H.R. 4460, Disaster Recovery Reform Act*, 115th Cong., 2nd sess., December 21, 2018, H.Rept. 115-1098, p. 16.

[37] This section authored by Diane P. Horn, Analyst in Flood Insurance and Emergency Management, Government and Finance Division, Federalism and Emergency Management Section.

[38] 42 U.S.C. §3149(c)(2).

[39] This section authored by Bruce R. Lindsay, Analyst in American National Government, Government and Finance Division, Federalism and Emergency Management Section.

[40] §420 of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5187; §404(a) of the Stafford Act, 42 U.S.C. §5170c(a).

Emergency declarations trigger aid that protects property, public health, and safety and lessens or averts the threat of an incident becoming a catastrophic event.[41]

A major disaster declaration constitutes the broadest authority for federal agencies to provide supplemental assistance to help state and local governments, families and individuals, and certain nonprofit organizations recover from the incident. Major disaster declarations also authorize statewide hazard mitigation grants to states and tribes through FEMA's HMGP. Authorized under Stafford Act Section 404—Hazard Mitigation,[42] HMGP can be used to fund mitigation projects to protect either private or public property, provided that the project fits within local, state, territorial, and Indian tribal government mitigation strategies to address risk and complies with HMGP guidelines.[43]

HMGP grant amounts are provided on a sliding scale based on the percentage of funds spent for Public and Individual Assistance for each presidentially-declared major disaster declaration. For states and federally-recognized tribes with a FEMA-approved Standard State or Tribal Mitigation Plan, the formula provides for up to 15% of the first $2 billion of estimated aggregate amounts of disaster assistance, up to 10% for amounts between $2 billion and $10 billion, and 7.5% for amounts between $10 billion and $35.333 billion.[44]

DRRA Section 1204 also requires the FEMA Administrator to submit a report one year after enactment and annually thereafter containing a summary of any mitigation projects carried out, and any funding provided to those projects, to the Senate Committee on Homeland Security and Governmental Affairs (HSGAC), the House Committee on Transportation and Infrastructure, and the House and Senate Committees on Appropriations.

One potential issue of congressional concern is the cost implications of providing mitigation funding for FMAG declarations. All things being equal, making HMGP available for FMAGs will increase federal expenditures for HMGP because it expands the number of incidents eligible for HMGP. The additional costs, however, may not be significant compared to HMGP funding for major disaster declarations. As previously discussed, HMGP grants are based on the percentage of funds spent for Public and Individual Assistance. Though it is unclear how the HMGP formula will be applied to FMAG declarations, HMGP grant amounts would likely be less than what is typically provided for major disasters because funding for major disasters is significantly more than what is provided for FMAGs. For example, from FY2017 to FY2018, $12.3 million has been obligated for FMAG declarations. In contrast, $1.7 billion has been obligated for Hurricane Matthew.[45] Furthermore, HMGP funding for FMAGs could be considered an investment because the projects they fund can help save recovery costs for future disasters.

[41] Given their purpose, emergency declarations may precede an event.

[42] §404 of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5170c.

[43] FEMA, *Hazard Mitigation Grant Program*, brochure, last accessed May 6, 2019, https://www.fema.gov/media-library-data/1437513326617-c124385de1b6061509f775a164c9aabd/FEMA_HMA_HMGP_tri_2015_508.pdf.

[44] FEMA, *Hazard Mitigation Grant Program*.

[45] Fire Management Assistance Grant (FMAG) obligations provided by FEMA. Hurricane Matthew obligations obtained from: FEMA, *Disaster Relief Fund: Monthly Report*, April 5, 2019, p. 13, https://www.fema.gov/media-library-data/1554754907409-9b903dabb493d864465306565b67b743/April2019DisasterReliefFundReport.pdf.

Section 1233: Additional Hazard Mitigation Activities[46]

DRRA Section 1233 authorizes recipients of hazard mitigation assistance to use the assistance to reduce the risk of earthquake damage, hardship, loss, or suffering for areas in the United States affected by earthquake hazards.[47] DRRA Section 1233 addresses three areas of earthquake mitigation, all related to improving the capability for an earthquake early-warning system:

1. improvements to regional seismic networks;
2. improvements to geodetic networks;[48] and
3. improvements to seismometers, global positioning system (GPS) receivers, and associated infrastructure.

The earthquake hazards and mitigation community long ago shifted away from an early focus on predicting earthquakes to mitigating earthquake hazards and reducing risk,[49] and more recently to a focus on activities that would enhance the effectiveness of an earthquake early-warning system. An earthquake early-warning system would send a warning after an earthquake occurred but before the damaging seismic waves reach a community that would be affected by the earthquake-induced shaking. In contrast, an earthquake prediction would provide a date, time, and location of a future earthquake.

The National Earthquake Hazards Reduction Program Reauthorization Act of 2018 (P.L. 115-307) removed statutory language referencing the goal of earthquake prediction, substituting instead the goal of issuing earthquake early warnings and alerts. Since 2006, the U.S. Geological Survey (USGS), together with several cooperating institutions, has been working to develop a U.S. earthquake early-warning system. According to the USGS, the goal is to create and operate such a system for the nation's highest-risk regions, beginning with California, Oregon, and Washington.[50] Other seismically active western states, such as Alaska, also may eventually be incorporated into an early-warning system, and possibly a region in the Midwest known as the New Madrid Seismic Zone.[51]

The authority provided in DRRA Section 1233 could help improve the U.S. early-warning capability because it addresses many of the components for earthquake detection (e.g., seismometers, the instruments that detect shaking), location (e.g., GPS receivers and infrastructure for more precise mapping of where shaking will occur), and improvements to the connected regional networks of seismometers and geodetic instruments. Part of the challenge in

[46] This section authored by Peter Folger, Specialist in Energy and Natural Resources Policy, Resources, Science and Industry Division, Natural Resources and Earth Sciences Section.

[47] For more specific information about earthquake hazards and the federal role, see CRS Report R43141, *The National Earthquake Hazards Reduction Program (NEHRP): Issues in Brief*, by Peter Folger.

[48] Geodetic networks establish the spatial reference framework for accurately and precisely locating points on the Earth's surface.

[49] Earthquake prediction has proved virtually insoluble over time. See, for example, U.S. Geological Survey (USGS), "Can You Predict Earthquakes?," last accessed May 6, 2019, https://www.usgs.gov/faqs/can-you-predict-earthquakes?qt-news_science_products=0#qt-news_science_products.

[50] See USGS, "Earthquake Early Warning," last accessed May 6, 2019, https://earthquake.usgs.gov/research/earlywarning/overview.php.

[51] Also referred to as the New Madrid fault zone. In this region in the central United States, a series of major earthquakes occurred in 1811-1812. Seismologists note that large earthquakes occur in the region roughly every 500 years. See American Geosciences Institute, "Earthquake Hazards Near the New Madrid Fault Zone," last accessed May 6, 2019, https://www.americangeosciences.org/critical-issues/factsheet/new-madrid-fault-zone.

implementing an effective earthquake early-warning system is communicating the timing and location of dangerous shaking once the earthquake occurs. The section does not appear to address that challenge directly; however, improvements to the components specified in the section would likely improve overall early-warning system performance.

Section 1231: Guidance on Hazard Mitigation Assistance[52]

DRRA Section 1231 requires FEMA, not later than 180 days after enactment (April 3, 2019), to issue guidance regarding the acquisition of property for open space as a mitigation measure under Stafford Act Section 404—Hazard Mitigation.[53] This guidance shall include a process by which the State Hazard Mitigation Officer (SHMO) appointed for the acquisition shall provide written notification to the local government, not later than 60 days after the applicant for assistance enters into an agreement with FEMA regarding the acquisition, that includes (1) the location of the acquisition; (2) the state-local assistance agreement for the Hazard Mitigation Grant Program; (3) a description of the acquisition; and (4) a copy of the deed restrictions. The guidance shall also include recommendations for entering into and implementing a memorandum of understanding between units of local government and the grantee or subgrantee, the state, and the regional FEMA Administrator that includes provisions to (1) use and maintain the open space consistent with Section 404 and all associated regulations, standards and guidance, and consistent with all adjoining property, so long as the cost of the maintenance is borne by the local government; and (2) maintain the open space pursuant to standards exceeding any local government standards defined in the agreement with FEMA.

Section 1215: Management Costs—Hazard Mitigation[54]

DRRA Section 1215 amends Stafford Act Section 324(b)(2)(A)—Management Costs[55] by setting out specific management cost caps for hazard mitigation.[56] A grantee under Stafford Act Section 404—Hazard Mitigation[57] may be reimbursed not more than 15% of the total award, of which not more than 10% may be used by the grantee and 5% by a subgrantee.

Public Assistance[58]

Section 1207(c) and (d): Program Improvements

DRRA Section 1207(c) amends Stafford Act Section 428(d)—Public Assistance Program Alternative Procedures to prohibit the conditioning of federal assistance under the Stafford Act on the election of an eligible entity to participate in the alternative procedures set forth in Section

[52] This section authored by Diane P. Horn, Analyst in Flood Insurance and Emergency Management, Government and Finance Division, Federalism and Emergency Management Section.

[53] 42 U.S.C. §5170c.

[54] This section authored by Diane P. Horn, Analyst in Flood Insurance and Emergency Management, Government and Finance Division, Federalism and Emergency Management Section.

[55] 42 U.S.C. §5165b(b).

[56] §1215 of DRRA, P.L. 115-254, as it amends §324 of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5165b.

[57] 42 U.S.C. §5170c.

[58] This section authored by Natalie Keegan, Analyst in American Federalism and Emergency Management Policy, Government and Finance Division, Federalism and Emergency Management Section.

428 of the Stafford Act.[59] Prior to enactment of this provision of DRRA, FEMA had the discretion to impose conditions on the use of Section 428 procedures.

DRRA Section 1207(d) amends Section 428(e)(1) to add a provision that requires cost estimates submitted under Section 428 procedures that are certified by a professionally licensed engineer and accepted by the FEMA Administrator to be presumed to be reasonable and eligible costs unless there is evidence of fraud.[60] Prior to enactment of this provision, FEMA had the discretion to make case-by-case determinations regarding whether costs were reasonable and eligible, and FEMA had the discretion to change the determinations even after an original cost estimate had been approved.

Section 1206(b): Eligibility for Code Implementation and Enforcement

DRRA Section 1206(b) amends Stafford Act Section 406—Repair, Restoration, and Replacement of Damaged Facilities to add base and overtime wages for extra hires to facilitate implementation and enforcement of adopted building codes as an allowable expense.[61] Allowable base and overtime wages are authorized for not more than 180 days after a major disaster declaration is issued.

Section 1235(b), (c), and (d): Additional Mitigation Activities

DRRA Section 1235(b) amends Stafford Act Section 406—Repair, Restoration, and Replacement of Damaged Facilities to specify that eligible costs for assistance provided under Section 406 be based on estimates of repairing, restoring, reconstructing, or replacing a public facility or private nonprofit facility in conformity with "the latest published editions of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant designs and establish minimum acceptable criteria for the design, construction, and maintenance of residential structures and facilities."[62] DRRA Section 1235 also requires that such eligible costs include estimates of replacing eligible projects under Stafford Act Section 406 "in a manner that allows the facility to meet the definition of resilient" developed pursuant to Section 406(e)(1)(A). Prior to DRRA's enactment, FEMA required that such project cost estimates be based on more general language of "codes, specifications, and standards" in place at the time the disaster occurred.

DRRA Section 1235(c) amends Stafford Act Section 406 to authorize the contributions for eligible costs to be provided on an actual cost basis or based on cost-estimation procedures[63] and DRRA Section 1235(d) directs the FEMA Administrator, in consultation with the heads of relevant federal agencies, to establish new rules regarding defining "resilient" and "resiliency" for

[59] §1207(c) of DRRA, P.L. 115-254, as it amends §428(d) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5189f(d).

[60] §1207(d) of DRRA, P.L. 115-254, as it amends §428(e)(1) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5189f(e)(1).

[61] §1206(b) of DRRA, P.L. 115-254, as it amends §406(a)(2) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5172(a)(2).

[62] §1235(b) of DRRA, P.L. 115-254, as it amends §406(e)(1)(A) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5172(e)(1)(A).

[63] §1235(c) of DRRA, P.L. 115-254, as it amends §406(e)(1) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5172(e)(1).

the purposes of eligible costs under Section 406 of the Stafford Act.[64] DRRA directs the President, acting through the FEMA Administrator, to issue a final rulemaking notice on the new rules not later than 18 months after DRRA's enactment (i.e., by April 5, 2020), and requires a final report summarizing the regulations and guidance issued defining "resilient" and "resiliency" to be submitted to Congress no later than two years after DRRA's enactment (i.e., by October 5, 2020).[65]

Section 1228: Inundated and Submerged Roads

DRRA Section 1228 requires the FEMA Administrator, in coordination with the FHWA Administrator, to develop and issue guidance for local, state, territorial, and Indian tribal governments regarding repair, restoration, and replacement of inundated and submerged roads damaged or destroyed by a major disaster.[66] The guidance must address associated expenses incurred by the government for roads eligible for assistance under Stafford Act Section 406—Repair, Restoration, and Replacement of Damaged Facilities.[67] Prior to DRRA's enactment, FEMA did not issue guidance specifically addressing inundated and submerged roads and alternatives in the use of federal disaster assistance for the repair, restoration, and replacement of roads damaged by a major disaster.

Section 1215: Management Costs—Public Assistance

DRRA Section 1215 amends Stafford Act Section 324(b)(2)(B)—Management Costs to place a cap on any direct administrative costs, and any other administrative associated expenses, of not more than 12% of the total award amount provided under Stafford Act Sections 403—Essential Assistance, 406—Repair, Restoration, and Replacement of Damaged Facilities, 407—Debris Removal, and 502—Federal Emergency Assistance.[68] The 12% cap is to be divided between the primary grantee and subgrantees with the primary grantee receiving not more than 7%, and subgrantees receiving not more than 5% of the total award amount.

Individual Assistance[69]

Section 1213: Multifamily Lease and Repair Assistance

DRRA Section 1213 amends Stafford Act Section 408(c)(1)(B)(ii)—Federal Assistance to Individuals and Households, Temporary Housing, Direct Assistance, Lease and Repair of Rental Units for Temporary Housing to expand the eligible areas for multifamily lease and repair properties, and remove the requirement that the value of the improvements or repairs not exceed the value of the lease agreement.[70] FEMA's Multifamily Lease and Repair program is a form of

[64] §1235(d) of DRRA, P.L. 115-254, as it amends §406(e) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5172(e).

[65] Prior to enactment of DRRA, FEMA did not issue such rules.

[66] §1228 of DRRA, P.L. 115-254.

[67] §1228 of DRRA, P.L. 115-254.

[68] §1215 of DRRA, P.L. 115-254, as it amends §324 of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5165b.

[69] This section authored by Elizabeth M. Webster, Analyst in Emergency Management and Disaster Recovery, Government and Finance Division, Federalism and Emergency Management Section.

[70] §1213 of DRRA, P.L. 115-254, as it amends §408(c)(1)(B)(ii) of the Stafford Act, P.L. 93-288, as amended, 42

direct temporary housing assistance under Stafford Act Section 408.[71] When eligible individuals and households are unable to use Rental Assistance due to a lack of available housing resources[72] and when it is determined to be a cost-effective alternative to other temporary housing options,[73] FEMA may enter into lease agreements with the owners of multifamily rental property units and may make improvements or repairs, in order to provide temporary housing.[74]

Expanding the Areas Eligible for Multifamily Lease and Repair

FEMA guidance includes limitations on the conditions of eligibility required to authorize properties for multifamily lease and repair.[75] Prior to DRRA's enactment, multifamily lease and repair properties had to be located in areas covered by an emergency or major disaster declaration.[76] Following DRRA's enactment, however, eligible properties also include those "impacted by a major disaster."[77] According to the House Transportation and Infrastructure Committee's *Disaster Recovery Reform Act Report* (*DRRA Report*), in amending this section of the Stafford Act, Congress intended to "allow greater flexibility and options for housing disaster victims."[78] Thus, DRRA Section 1213 expands program eligibility for properties, which may increase the number of FEMA-leased multifamily rental properties. This may:

- increase available housing stock for eligible individuals and households; and

U.S.C. §5174(c)(1)(B)(ii).

[71] 42 U.S.C. §5174(c)(1)(B)(ii); see also FEMA, *Recovery Policy: Multi-Family Lease and Repair Program—Direct Temporary Housing*, 9459.1, September 10, 2013, https://www.fema.gov/media-library-data/1384452357718-95f11f1ef06e063e305edd22bee70964/MLRP_Policy.pdf; and FEMA, *Individual Assistance Program and Policy Guide (IAPPG)*, FP 104-009-03, March 2019, p. 107, https://www.fema.gov/media-library-data/1551713430046-1abf12182d2d5e622d16accb37c4d163/IAPPG.pdf (note that FEMA's *IAPPG* applies to any disaster declared on or after March 1, 2019).

[72] FEMA, *Individuals and Households Program Unified Guidance (IHPUG)*, FP 104-009-03, September 2016, pp. 61 and 73, https://www.fema.gov/media-library-data/1483567080828-1201b6eebf9fbbd7c8a070fddb308971/FEMAIHPUG_CoverEdit_December2016.pdf (note that FEMA's *IHPUG* applies to any disaster declared on or after September 30, 2016); FEMA, *IAPPG*, p. 107.

[73] 42 U.S.C. §5174(c)(1)(B)(ii)(I); see also FEMA, *IHPUG*, pp. 74-75 (note that the *IHPUG* provides the steps to determine cost-effectiveness); and FEMA, *IAPPG*, pp. 107-112.

[74] FEMA, *Recovery Policy: Multi-Family Lease and Repair Program*.

[75] FEMA, *IAPPG*, p. 107.

[76] 42 U.S.C. §5174(c)(1)(B)(ii)(I)(aa) (2017), https://www.govinfo.gov/content/pkg/USCODE-2017-title42/pdf/USCODE-2017-title42-chap68-subchapIV-sec5174.pdf#page=2; see also FEMA, *IHPUG*, p. 73. The *IHPUG* details requirements for properties to meet the conditions of eligibility for participation in the multifamily lease and repair program. It states "[t]he property must be located in an area included in a major disaster or emergency declaration."

[77] §1213(b) of DRRA, P.L. 115-254, as it amends §408(c)(1)(B)(ii)(I)(aa) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5174(c)(1)(B)(ii)(I)(aa); see also 44 C.F.R. §206.2(a)(6); FEMA, *IHPUG*, p. 3; and FEMA, *IAPPG*, p. 5. When an emergency or major disaster is declared, areas of the affected state are "designated" as having been deemed eligible for federal assistance. A *designated area* is "[a]ny emergency or major disaster-affected portion of a State which has been determined eligible for Federal assistance" (44 C.F.R. §206.2(a)(6)). Designated areas may include counties, parishes, or tribal lands, as well as municipalities, villages, or districts (FEMA, *IAPPG*, p. 5). Note that the *IHPUG* lists counties, parishes, or tribal lands, and the *IAPPG* expands this list to also include municipalities, villages, or districts (FEMA, *IHPUG*, p. 3).

[78] U.S. Congress, House Committee on Transportation and Infrastructure (House Transportation and Infrastructure), *Disaster Recovery Reform Act (DRRA) Report*, committee print, 115th Cong., 2nd sess., December 21, 2018, H.Rept. 115-1098, p. 31.

- reduce FEMA's reliance on other, less cost-effective forms of direct assistance (e.g., Transportable Temporary Housing Units (TTHUs)).[79]

Although it was released following DRRA's enactment, FEMA's most recent guidance—the *Individual Assistance Program and Policy Guide* (*IAPPG*)[80]—states that in order to be eligible for multifamily lease and repair, "[t]he property must be located in an area designated for IA [Individual Assistance] included in a major disaster declaration," which is inconsistent with Stafford Act Section 408(c)(1)(B)(ii)(I)(aa), as amended by DRRA. The *IAPPG* does, however, add the ability for FEMA to add counties/jurisdictions to the major disaster declaration designed for IA "specifically for the purpose of implementing MLR [Multifamily Lease and Repair]."[81] Thus, while FEMA's most recent guidance expands the agency's ability to implement MLR, it still states that properties must be in designated areas. In order to reflect the changes to the Multifamily Lease and Repair program post-DRRA, FEMA would need to update its guidance to be consistent with Stafford Act Section 408(c)(1)(B)(ii)(I)(aa), as amended, and may consider defining what it means for a property to be "impacted by a major disaster," and any additional, related eligibility criteria.

Determining the Cost-Effectiveness of Potential Multifamily Lease and Repair Properties

Prior to DRRA's enactment, the value of the improvements or repairs were not permitted to exceed the value of the lease agreement,[82] which, per FEMA policy, could not be greater than the Fair Market Rent (FMR).[83] Post-DRRA, the restriction that improvements or repairs not exceed the value of the lease agreement has been removed from Stafford Act Section 408(c)(1)(B)(ii)(II)—Federal Assistance to Individuals and Households, Temporary Housing, Direct Assistance, Lease and Repair of Rental Units for Temporary Housing, as amended.[84] Additionally, and as was the case prior to DRRA, the cost-effectiveness of the potential

[79] FEMA, *IAPPG*, pp. 95-96 and 107-112.

[80] FEMA's *IAPPG* was published in March 2019.

[81] FEMA, *IAPPG*, p. 108. Per the *IAPPG*, in order to add counties/jurisdictions, the following requirements must be met: (1) the designated counties/jurisdictions include insufficient properties to meet the housing need; (2) FEMA has identified suitable multifamily lease and repair properties within counties/jurisdictions that are proposed to be designated; (3) the properties are necessary to provide temporary housing within a reasonable commuting distance; and (4) the governor (or Governor's Authorized Representative (GAR)) submits a written request to add the counties/jurisdictions, and the request is approved by the FEMA Associate Administrator for Response and Recovery. In addition, FEMA's *IAPPG* increases flexibility by redefining multifamily rental housing as a "rental property that contains three or more dwelling units ... ," as opposed to a "property that contains not less than five dwelling units ... " per the *IHPUG* (FEMA, *IAPPG*, p. 107; FEMA, *IHPUG*, p. 73).

[82] 42 U.S.C. §5174(c)(1)(B)(ii)(II)(bb) (2017); see also FEMA, *IHPUG*, pp. 74-75.

[83] FEMA, *IHPUG*, pp. 50-51 and 74-75; FEMA, *IAPPG*, pp. 85-86 and 107-112; see also 44 C.F.R. §206.111. Fair Market Rent (FMR) is defined in FEMA policy as "housing market-wide estimates of rents that provide opportunities to rent standard quality housing throughout the geographic area in which rental housing units are in competition. The fair market rent rates applied are those identified by HUD [U.S. Department of Housing and Urban Development] as being adequate for existing rental housing in a particular area. FEMA uses the applicable rate based upon the location of the housing unit, the number of bedrooms in the housing unit, and the fiscal year in which the major disaster declaration was issued." FEMA uses its FMR Calculator to evaluate the need for a Rental Assistance rate increase and will authorize a rate increase only when the published HUD FMR for the declared disaster area or host area is significantly less than the prevailing market rates.

[84] 42 U.S.C. §5174(c)(1)(B)(ii)(II); see also U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs (HSGAC), *Disaster Recovery Reform Act of 2018 (DRRA) Report*, committee print, 115th Cong., 2nd sess., December 19, 2018, S.Rept. 115-446, p. 11.

multifamily lease and repair property must still be considered when FEMA determines whether or not to enter into a lease agreement with a property owner for the purpose of providing Multifamily Lease and Repair assistance.[85] As stated above, when eligible individuals and households are unable to use Rental Assistance and when it is determined to be a cost-effective alternative to other temporary housing options, FEMA may use multifamily lease and repair to provide temporary housing.[86] According to FEMA's guidance, the process by which the agency determines the cost-effectiveness of a potential multifamily lease and repair property is that "FEMA will determine the value of the lease agreement by multiplying the approved monthly Rental Assistance rate by the number of units, and then multiplying the number of months remaining between the date the repairs are completed and the end of the 18-month period of assistance."[87] FEMA guidance, however, currently states that there are three steps that FEMA must take to determine the cost-effectiveness of a potential multifamily lease and repair property. FEMA would need to update the *IAPPG* to clarify the process by which FEMA determines cost-effectiveness and to reflect the fact that the cost-effectiveness determination is not based on a three-step test.[88]

Additionally, it is unclear whether the removal of the restriction that improvements or repairs not exceed the value of the lease agreement will have a significant impact on program administration. There are several reasons the impact of this legislative change may not be significant including:

- the property must be found to be cost-effective even if a potential property requiring improvements or repairs in excess of the value of the lease agreement may be otherwise eligible; and
- prior to DRRA's enactment, it was possible for FEMA to enter into lease agreements when the value of the improvements or repairs exceeded the value of the lease agreement, provided the necessary written justification was submitted and approved.[89]

Finally, within two years (i.e., due by October 5, 2020), the Inspector General (IG) of DHS must assess the use of FEMA's direct assistance authority, including the adequacy of the benefit-cost analysis conducted, to justify this alternative to other temporary housing options, and submit a report to Congress.[90]

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[85] 42 U.S.C. §5174(c)(1)(B)(ii)(I); see also FEMA, *IHPUG*, pp. 74-75.

[86] FEMA, *Recovery Policy: Multi-Family Lease and Repair Program*.

[87] Email correspondence from FEMA Congressional Affairs staff, May 10, 2019. In the email, FEMA responded that the bullet that states "'FEMA will determine the value of the lease agreement by multiplying the approved monthly Rental Assistance rate by the number of units, and then multiplying the number of months remaining between the date the repairs are completed and the end of the 18-month period of assistance' describes how FEMA determines cost effectiveness. This language will be replaced when we issue our interim policy memo for MLR to implement the DRRA section 1213 and those changes will also be included in the next version of the IAPPG."

[88] FEMA, *IHPUG*, pp. 50-51 and 74-75; FEMA, *IAPPG*, pp. 85-86 and 107-112. CRS contacted FEMA's Office of Congressional Affairs to request clarification regarding the three-step test because it is unclear from the *IAPPG* what the specific three-step test entails, and how the results are applied to assess cost-effectiveness. In email correspondence from FEMA Congressional Affairs staff received on May 10, 2019, FEMA responded that "[t]here is no 'three step test for MLR.' That language was included from an earlier version of the document in error. The preceding bullet, 'FEMA will determine the value of the lease agreement by multiplying the approved monthly Rental Assistance rate by the number of units, and then multiplying the number of months remaining between the date the repairs are completed and the end of the 18-month period of assistance' describes how FEMA determines cost effectiveness. This language will be replaced when we issue our interim policy memo for MLR to implement the DRRA section 1213 and those changes will also be included in the next version of the IAPPG."

[89] FEMA, *IHPUG*, pp. 74-75.

[90] §1213(c) of DRRA, P.L. 115-254.

Section 1211: State Administration of Assistance for Direct Temporary Housing and Permanent Housing Construction

The State or Tribal Government's Role in Providing Direct Temporary Housing Assistance and Permanent Housing Construction

DRRA Section 1211(a) amends Stafford Act Section 408(f)—Federal Assistance to Individuals and Households, State Role to expand the types of FEMA Individuals and Households Program (IHP) assistance that a state, territorial, or Indian tribal government may request to administer under Stafford Act Section 408(f)(1)(A) to include Direct Temporary Housing Assistance under Section 408(c)(1)(B) and Permanent Housing Construction under Section 408(c)(4), in addition to Other Needs Assistance (ONA) under Section 408(e).[91] Prior to DRRA's enactment, Stafford Act Section 408(f)(1) only allowed state, territorial, and Indian tribal governments to request financial assistance to manage ONA.[92]

According to Senate HSGAC's *Disaster Recovery Reform Act of 2018 Report* (*DRRA Report*), this section of DRRA "emphasizes the need for and provides tools to execute an effective local response to disasters ... [in part by] empowering states to administer housing assistance efforts."[93] FEMA has also stated that:

> [s]tate and tribal officials have the best understanding of the temporary housing needs for survivors in their communities. This provision incentivizes innovation, cost containment and prudent management by providing general eligibility requirements while allowing them the flexibility to design their own programs.[94]

These statements highlight a key aspect of this amendment to the Stafford Act—that, because the federal share of eligible housing costs is 100%,[95] in effect, FEMA may now provide state, territorial, and Indian tribal governments with a block grant for disaster housing assistance, provided certain requirements are met (see below).[96] Allowing state, territorial, or Indian tribal governments to administer these housing programs, in addition to ONA, using a flexible, block-grant program that "leverag[es] state autonomy"[97] "to tailor a solution that specifically addresses the needs of disaster victims"[98] may expedite and enhance disaster recovery.[99] Despite these

[91] §1211(a)(1) of DRRA, P.L. 115-254, as it amends §408(f)(1)(B) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5174(f)(1)(B).

[92] 42 U.S.C. §5174(c)(1)(B)(ii)(I)(aa) (2017).

[93] HSGAC, *DRRA Report*, p. 1; see also §1211(a)(2) of DRRA, P.L. 115-254, as it amends §408(f)(3)(H) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5174(f)(3)(H). Congress appears to have also intended to incentivize state, territorial, and Indian tribal participation in administering these programs, as FEMA is required to submit a report to HSGAC and the House Transportation and Infrastructure Committee on a potential incentive structure to encourage eligible state, territorial, or Indian tribal governments to participate, including potentially adjusting the cost-share requirement and management costs.

[94] FEMA, "Disaster Recovery Reform Act of 2018 (DRRA) Transforms Field of Emergency Management," press release, October 5, 2018, https://www.fema.gov/news-release/2018/10/05/disaster-recovery-reform-act-2018-transforms-field-emergency-management.

[95] 42 U.S.C. §5174(g).

[96] HSGAC, *DRRA Report*, p. 10.

[97] HSGAC, *DRRA Report*, p. 5.

[98] House Transportation and Infrastructure, *DRRA Report*, p. 18.

[99] See §1211(a)(2) of DRRA, P.L. 115-254, as it amends §408(f)(3)(G)(i) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5174(f)(3)(G)(i). The DHS IG is supposed to provide a report to Congress on whether the state, territorial,

benefits, the ability for state, territorial, or Indian tribal governments to design and administer customized versions of these programs has the potential to result in challenges. For example:

- individuals and households may face challenges to participating in these programs if application processes and program requirements are not clearly defined, or if their past participation in these programs differs from future program implementation;
- client advocates and case managers may have trouble supporting individuals and households seeking to and/or participating in these programs if application processes and program administration differ from jurisdiction to jurisdiction, or if a state/territorial/Indian tribal government implements the programs differently for different disasters;
- state, territorial, and Indian tribal governments seeking to administer these programs may also struggle to administer active programs with different application processes and program administration requirements, and may find it difficult to manage programs when future program implementation differs from past program implementation; and
- federal partners supporting state, territorial, and Indian tribal governments may find it difficult to keep track of application processes and program administration that differs from jurisdiction to jurisdiction, or when future program implementation differs from past program implementation.

In addition to the programmatic flexibility accorded by this amendment to the Stafford Act, state, territorial, or Indian tribal governments that elect to administer housing assistance and/or ONA under Section 408(f) are eligible to expend up to 5% of the amount of the grant for administrative costs.[100] This may increase their capacity to quickly and effectively administer these programs.[101]

With the addition of the ability of state, territorial, or Indian tribal governments to administer Direct Temporary Housing Assistance and Permanent Housing Construction, it is possible that the state, territorial, or Indian tribal government may be required to select an option for administration of assistance, as in the case with ONA.[102] Within two years of DRRA's enactment

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or Indian tribal government has effectively provided assistance under this section, and the report shall include an assessment of "whether the State or Indian tribal government's role helped to improve the general speed of disaster recovery." This supports Congress's intent to expedite disaster recovery in amending this section of the Stafford Act.

[100] 42 U.S.C. §5174(f)(1)(B).

[101] §1211(a)(2) of P.L. 115-254 as it amends §408(f)(3)(G)(ii) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5174(f)(3)(G)(ii). The DHS IG is supposed to provide a report to Congress on whether state, territorial, or Indian tribal governments have effectively provided assistance under this section, and the report shall include an assessment of "whether the State or Indian tribal government providing assistance under this section had the capacity to administer this section." This, coupled with the ability to expend administrative costs under §408(f)(1)(B), make it appear that Congress intended to ensure the capacity of the state, territorial, or Indian tribal government to administer the program in amending this section of the Stafford Act. See also FEMA, "Disaster Recovery Reform Act of 2018 (DRRA) Transforms Field of Emergency Management," press release, October 5, 2018, https://www.fema.gov/news-release/2018/10/05/disaster-recovery-reform-act-2018-transforms-field-emergency-management.

[102] 44 C.F.R. §206.120; see also FEMA, *IHPUG*, pp. 91-92; and FEMA, *IAPPG*, p. 135. FEMA's regulation on the provision of ONA requires a state, territorial, or Indian tribal government to select one of three options for administration of the ONA: the FEMA Option, the Joint Option, or the State, Territorial or Indian Tribal Government Option. Under the FEMA Option, FEMA is responsible for all tasks associated with the administration of ONA. Under the State, Territorial, or Indian Tribal Government Option, FEMA provides ONA as a grant to the state, territorial, or Indian tribal government, which administers ONA. Under the Joint Option, the state, territorial, or Indian tribal government administers ONA jointly with FEMA, splitting responsibilities for various administrative tasks. FEMA stated that it is developing a State-Administered Direct Housing Grant Guide that will provide the guidance that

(i.e., by October 5, 2020), FEMA is required to issue final regulations to establish how a state, territorial, or Indian tribal government is to administer Direct Temporary Housing Assistance and Permanent Housing Construction. In the intervening period, FEMA has the ability to administer this as a pilot program until the final regulations are promulgated (an example of such a regulation can be found in 44 C.F.R. §206.120—State Administration of Other Needs Assistance, which sets out the regulations for state administration of ONA).[103]

New Requirements

In addition to expanding the types of assistance state, territorial, and Indian tribal governments may administer, DRRA adds requirements for the receipt of approval to administer such assistance.[104] Prior to DRRA's enactment, in order to administer ONA, a governor had to request a grant to provide financial assistance.[105] Post-DRRA, if a state, territorial, or Indian tribal government would like to administer Direct Temporary Housing Assistance, Permanent Housing Construction, and/or ONA, then it must "submit to the President an *application* for a grant to provide financial assistance under the program [emphasis added]."[106] DRRA also includes criteria for the approval of applications, as follows:

> (i) a requirement that the State or Indian tribal government submit a housing strategy under subparagraph (C) [Requirement of Housing Strategy];
>
> (ii) the demonstrated ability of the State or Indian tribal government to manage the program under this section;
>
> (iii) there being in effect a plan approved by the President as to how the State or Indian tribal government will comply with applicable Federal laws and regulations and how the State or Indian tribal government will provide assistance under its plan;
>
> (iv) a requirement that the State or Indian tribal government comply with rules and regulations established pursuant to subsection (j); and
>
> (v) a requirement that the President, or the designee of the President, comply with subsection (i) [Verification Measures].[107]

Three requirements intended to ensure the state, territorial, or Indian tribal government that seeks to administer these programs has the capacity to do so, include:[108]

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enables implementation of the pilot program for the administration of Direct Temporary Housing Assistance and Permanent Housing Construction. The guide is under development as of the date of publication. It is possible that the guidance may address options for how the state, territorial, and Indian tribal government housing options may be administered. Email correspondence from FEMA Congressional Affairs staff, May 16, 2019.

[103] §1211(a)(2) of DRRA, P.L. 115-254, as it amends §408(f)(3)(J) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5174(f)(3)(J).

[104] §1211(a)(2) of DRRA, P.L. 115-254.

[105] 42 U.S.C. §5174(f)(1)(A) (2017).

[106] §1211(a)(2) of DRRA, P.L. 115-254, as it amends §408(f)(3)(A) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5174(f)(3)(A).

[107] §1211(a)(2) of DRRA, P.L. 115-254, as it amends §408(f)(3)(B) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5174(f)(3)(B).

[108] FEMA, "DRRA Transforms Emergency Management"; see also HSGAC, *DRRA Report*, p. 1.

- the state, territorial, or Indian tribal government must have an approved housing strategy, which may encourage the development of disaster housing strategies to better enable effective local response to disasters;[109]
- the state, territorial, or Indian tribal government must have the demonstrated ability to manage the program—although it is unclear what evidence may be used to demonstrate the capacity to manage the housing-related programs (note that FEMA is developing guidance for the administration of Direct Temporary Housing and Permanent Housing Construction).[110] An approved State Administrative Plan is a requirement to administer ONA, and FEMA considers this sufficient to demonstrate the state, territorial, or Indian tribal government's capability to manage ONA;[111] and
- the President or designee shall implement policies, procedures, and internal controls to prevent "waste, fraud, abuse, and program mismanagement"; it is possible for the President to withdraw the approval for the state, territorial, or Indian tribal government to administer Direct Temporary Housing Assistance, Permanent Housing Construction, or ONA.[112]

FEMA may need to clarify the application and approval requirements because it is unclear (1) how concepts such as "waste" and "abuse" are defined in this context; (2) how the determination that "the State or Indian tribal government is not administering the program ... in a manner satisfactory to the President" will be made—although DRRA includes a requirement that the DHS IG periodically audit the programs administered by the state, territorial, or Indian tribal governments, and these audits may be used to assess program administration;[113] and (3) how program administration will be managed following a withdrawal of approval and/or whether there will be an opportunity for the state, territorial, or Indian tribal government to remedy any issues identified with regard to program administration or appeal a decision withdrawing approval.

Within two years of DRRA's enactment (i.e., by October 5, 2020), FEMA is required to issue final regulations on the administration of this program, in which FEMA may consider addressing the administration of the application and approval processes and requirements, including the requirements for demonstrating the capacity to manage the program, and the process for the

[109] §1211(a)(2) of DRRA, P.L. 115-254, as it amends §408(f)(3)(C) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5174(f)(3)(C).

[110] FEMA stated that it is developing a State-Administered Direct Housing Grant Guide that will provide the guidance that enables implementation of the pilot program for the administration of Direct Temporary Housing Assistance and Permanent Housing Construction. The guide is under development as of the date of publication. Email correspondence from FEMA Congressional Affairs staff, May 16, 2019.

[111] The State Administrative Plan describes the procedures that will be used to administer ONA. FEMA, *IAPPG*, p. 137; 44 C.F.R. §206.120(c); email correspondence from FEMA Congressional Affairs staff, May 16, 2019.

[112] §1211(a)(2) of DRRA, P.L. 115-254, as it amends §408(f)(3)(D) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5174(f)(3)(D).

[113] §1211(a)(2) of DRRA, P.L. 115-254, as it amends §408(f)(3)(E) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5174(f)(3)(E). Stafford Act Section 408(f)(3), as amended by DRRA, includes reporting requirements to help Congress evaluate the effectiveness of the state, territorial, or Indian tribal government in providing assistance under this section. Specifically, the DHS IG is required to submit a report to HSGAC and the House Transportation and Infrastructure Committee on the effectiveness of the state, territorial, or Indian tribal government's role in providing assistance under this section not later than 18 months after the date of enactment (i.e., due by April 5, 2020). This report must include information about whether the state, territorial, or Indian tribal government's role expedited recovery, whether it had the capacity to administer the program(s), and recommendations to improve the program if the state, territorial, or Indian tribal government's role should continue.

withdrawal of approval and any remedies the state, territorial, or Indian tribal government may have.[114]

State and Local Reimbursement for Implementing a Housing Solution

DRRA Section 1211(b) provides a mechanism for state and local units of government to be reimbursed in the event they do not request a grant to administer housing assistance, if the solution they implement satisfies several conditions.[115] Specifically, DRRA Section 1211(b) notes that FEMA shall reimburse state and local "units of government" for locally-implemented housing solutions that meet three requirements, provided the request for reimbursement is received within a three-year period after a major disaster declaration[116] under Stafford Act Section 401—Procedure for Declaration.[117] The three requirements are that the solution:

> (1) costs 50 percent of comparable FEMA solution or whatever the locally implemented solution costs, whichever is lower;
>
> (2) complies with local housing regulations and ordinances; and
>
> (3) the housing solution was implemented within 90 days of the disaster.[118]

It is unclear how and when a reimbursement will be provided when a housing solution meets the proper eligibility conditions set forth above. FEMA may issue a new rulemaking and/or policy guidance to establish how the cost of the locally-implemented solution will be assessed and compared with the FEMA solution, as well as how reimbursement requests will be processed.

Section 1212: Assistance to Individuals and Households

DRRA Section 1212 amends Stafford Act Section 408(h)—Federal Assistance to Individuals and Households, Maximum Amount of Assistance—to create separate caps for the maximum amount of financial assistance eligible individuals and households may receive for housing assistance and for ONA, and allow for accessibility-related costs. Under FEMA's IHP, financial assistance (e.g., assistance to rent alternate housing accommodations, conduct home repairs, and ONA) and/or direct assistance (e.g., Multifamily Lease and Repair and TTHUs) may be available to eligible individuals and households who, as a result of a disaster, have uninsured or under-insured necessary expenses and serious needs that cannot be met through other means or forms of assistance.[119] Prior to DRRA, an individual or household could receive up to $33,300 (FY2017; adjusted annually)[120] in financial assistance, which included both housing assistance and ONA.[121] Post-DRRA, financial assistance for housing-related needs may not exceed $34,900 (FY2019;

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[114] §1211(a)(2) of DRRA, P.L. 115-254, as it amends §408(f)(3)(J) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5174(f)(3)(J).

[115] §1211(b) of DRRA, P.L. 115-254. Section 1211(a) of DRRA makes it possible for state, territorial, and Indian tribal governments to request and receive a grant to provide Direct Temporary Housing Assistance and Permanent Housing Construction, which in the past, FEMA exclusively provided directly to eligible individuals and households.

[116] §1211(b) of DRRA, P.L. 115-254.

[117] §401 of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5170.

[118] §1211(b) of DRRA, P.L. 115-254.

[119] 42 U.S.C. §5174.

[120] FEMA, DHS, "Notice of Maximum Amount of Assistance Under the Individuals and Households Program," 81 *Federal Register* 70431, October 12, 2016, https://www.govinfo.gov/content/pkg/FR-2016-10-12/pdf/2016-24626.pdf.

[121] 42 U.S.C. §5174(h) (see versions from 2017 and prior), https://www.govinfo.gov/content/pkg/USCODE-2017-title42/pdf/USCODE-2017-title42-chap68-subchapIV-sec5174.pdf.

adjusted annually),[122] and, separate from that, financial assistance for ONA may not exceed $34,900 (FY2019; adjusted annually).[123] Thus, separate caps of equal amounts have been established for financial housing assistance and ONA. In addition, financial assistance to rent alternate housing accommodations is not subject to the cap.[124] As of the date of this report's publication, FEMA's *IAPPG* has not been updated to reflect DRRA's changes to the maximum amount of financial assistance. It still notes that Rental Assistance is subject to the cap, which has the potential to create confusion for local, state, territorial, Indian tribal, and federal governments, nonprofit partners, and other entities that assist disaster survivors seeking to rely on the *IAPPG* as a resource for FEMA's IA policies and procedures.[125] However, FEMA has posted a memorandum on the policy changes to its website,[126] and has stated that the changes will be "incorporated into a subsequent publication of the IAPPG."[127]

DRRA Section 1212 also amends Stafford Act Section 408(h) to create exclusions to the maximum amount of assistance for individuals with disabilities for expenses to repair or replace:

- accessibility-related property improvements under FEMA's Repair Assistance, Replacement Assistance, and Permanent Housing Construction;[128] and
- accessibility-related personal property under Financial Assistance to Address Other Needs—Personal Property, Transportation, and Other Expenses Assistance.[129]

Thus, the addition of Stafford Act Section 408(h)(4) may expand the eligibility of individuals with disabilities for financial assistance.[130]

In response to the IHP changes post-DRRA, FEMA began processing retroactive payments to applicants who either reached or exceeded the financial cap for disasters declared on or after

[122] FEMA, "Notice of Maximum Amount of Assistance Under the Individuals and Households Program," 83 *Federal Register* 53281, October 22, 2018, https://www.govinfo.gov/content/pkg/FR-2018-10-22/pdf/2018-22884.pdf. Note that the maximum amount of financial assistance is adjusted annually to reflect changes in the Consumer Price Index (44 C.F.R. §206.110(b)). Post-DRRA, housing-related needs that are subject to the cap on the maximum amount of financial assistance an individual or household may be eligible to receive include Home Repair Assistance and Home Replacement Assistance. Lodging Expense Reimbursement, Rental Assistance, and Continued Rental Assistance are not subject to the cap. FEMA, "Policy Changes to the Individuals and Households Program resulting from the Disaster Recovery Reform Act of 2018, Section 1212," memorandum, March 25, 2019, p. 1, https://www.fema.gov/media-library-data/1557238500138-2c015fa2d9c8d73935ea392520d6a068/Chris_Signature_DRRA_1212_Memo_32519.pdf.

[123] §1212 of DRRA, P.L. 115-254.

[124] §1212 of DRRA, P.L. 115-254; FEMA, "Policy Changes to the Individuals and Households Program," p. 1; see also HSGAC, *DRRA Report*, pp. 10-11.

[125] FEMA, *IAPPG*, p. 80. Although the *IAPPG* is guidance, and DRRA—as the law—supersedes FEMA's guidance, FEMA should work to ensure its guidance aligns with the Stafford Act as amended by DRRA, and the standalone sections of DRRA that effect programmatic changes, because the *IAPPG* is intended to serve as a "comprehensive guide to programs and activities available to the state, territory, tribe, or local government following a disaster" (FEMA, *IAPPG*, p. 1).

[126] FEMA, "Individual Assistance Program and Policy Guide March 2019 Signed," https://www.fema.gov/media-library/assets/documents/177489.

[127] FEMA, "Policy Changes to the Individuals and Households Program," p. 1.

[128] §1212 of DRRA, P.L. 115-254, as it amends §408(h)(4)(A) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5174(h)(4)(A).

[129] §1212 of DRRA, P.L. 115-254, as it amends §408(h)(4)(B) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5174(h)(4)(B).

[130] FEMA, "DRRA Transforms Emergency Management"; see also HSGAC, *DRRA Report*, pp. 6 and 10-11.

August 1, 2017,[131] and stated that, in April 2019, it would begin evaluating applications to assess whether some survivors may be eligible for additional rental assistance, which may enable eligible applicants to receive additional funds.[132] Administrative challenges may arise if eligible applicants who received the previous maximum amount of financial assistance now request additional financial assistance for programs to which they did not previously apply. For example, an eligible applicant may not have requested ONA if their request for Repair Assistance already equaled or exceeded the cap.

In the past, the combined—housing assistance and ONA—cap on the maximum amount of financial assistance that an individual or household was eligible to receive may have resulted in applicants with significant home damage and/or other needs having insufficient funding to meet their disaster-caused needs, including little to no remaining funding available to pay for rental assistance. Thus, changes to Stafford Act Section 408(h) post-DRRA have the potential to result in increased assistance to eligible disaster survivors, and increased federal spending on temporary disaster housing assistance and ONA.[133] This may help to better meet the recovery-related needs of individuals and households who experience significant damage to their primary residence and personal property as a result of a major disaster. However, there is also the potential that this change may disincentivize sufficient insurance coverage because of the new ability for eligible individuals and households to receive separate and increased housing assistance and ONA awards that more comprehensively cover disaster-related real and personal property losses.

[131] §1202 of DRRA, P.L. 115-254. Amendments to the Stafford Act apply to major disasters and emergencies declared on or after August 1, 2017.

[132] FEMA, "FEMA Bulletin Week of March 18, 2019: FEMA Announces Retroactive Payments to Disaster Survivors," press release, March 19, 2019, https://content.govdelivery.com/accounts/USDHSFEMA/bulletins/237ddd7. FEMA's website that tracks its implementation of DRRA has included an implementation update for Section 1212, which states that "[r]etroactive payments began in March 2019" and that it "[a]utomatically applied to new disasters as of April 2019" (FEMA, "Disaster Recovery Reform Act of 2018," last updated June 11, 2019, https://www.fema.gov/disaster-recovery-reform-act-2018).

[133] 42 U.S.C. §5174(c)(3); see also 44 C.F.R. §206.119(c)(6)(i) and (d); FEMA, *IAPPG*, pp. 62 and 159-163; and FEMA, *IHPUG*, pp. 23 and 112-114. Financial assistance provided under ONA can also be used to purchase flood insurance, and the separation of the maximum amount of financial assistance cap for housing and ONA may result in increased funding to pay for flood insurance, when required. Per the *IAPPG* and *IHPUG*, the National Flood Insurance Reform Act (NFIRA) and FEMA regulations require applicants who receive financial assistance—in the context of the IHP, this includes Home Repair Assistance, Home Replacement Assistance, Permanent Housing Construction, and/or Personal Property—to purchase flood insurance for future flood damage to any insurable real or personal property for acquisition or construction purposes. This applies to property that is, or will be, in a designated Special Flood Hazard Area (SFHA) and can be insured under the National Flood Insurance Program (NFIP). For IHP purposes, applicants who live in a designated SFHA and receive IHP assistance must obtain and maintain flood insurance coverage for at least the amount of disaster assistance they receive from FEMA, and can satisfy this requirement by purchasing private insurance or a policy through the NFIP. Applicants who do not obtain and maintain flood insurance will be ineligible for IHP assistance for future flood-damaged real or personal property. Disaster-related expenses covered by ONA may include the purchase of a Group Flood Insurance Policy (GFIP), provided the cost of the GFIP policy does not exceed the remaining amount of ONA, per the maximum amount of financial assistance provision. Thus, FEMA may pay $600 under ONA for three years of flood insurance for eligible ONA recipients who experienced flood-damage. FEMA and the state IHP staff are required to provide the NFIP with records of individuals and households that receive ONA awards and are to be insured through the GFIP, and those individuals and households are covered unless determined to be ineligible based on exclusions established by the NFIP (e.g., items that are damaged must be insurable under the NFIP, and the applicant cannot have a previous flood insurance requirement as a condition of receiving future IHP assistance). As noted above, applicants are responsible for purchasing flood insurance, regardless of whether the funding comes out of their ONA award or they personally purchase a policy.

Section 1216: Flexibility

Discretionary Ability to Waive Debts

DRRA Section 1216(a) allows FEMA to waive debts owed to the United States related to assistance provided under Stafford Act Section 408—Federal Assistance to Individuals and Households.[134]

Federal laws require federal agencies, including FEMA, to identify and recover *improper payments*.[135] Specifically, the Improper Payments Information Act of 2002 (IPIA, P.L. 107-300) and the Improper Payments Elimination and Recovery Act of 2010 (IPERA, P.L. 111-204) direct the head of each federal agency to review and identify all programs and activities administered by the agency that may be "susceptible to significant improper payments."[136] IPERA also includes the requirement that the agency take action to collect overpayments.[137] Several federal programs account for a significant portion of improper payments, including FEMA's IHP.[138] The dual—and sometimes conflicting—goals of (1) expediting FEMA assistance to disaster survivors and (2) maintaining administrative controls to ensure program eligibility may contribute to improper payments. Nonetheless, FEMA reviews disaster assistance payments following every disaster and works to collect overpayments.[139]

FEMA does have some discretion not to pursue recoupment.[140] Additionally, the need for FEMA to have discretion with regard to recoupment was previously identified—albeit for a limited period of time. Congressional "concerns about the fairness of FEMA collecting improper payments caused by FEMA error especially when a significant amount of time had elapsed before

[134] §1216(a) of DRRA, P.L. 115-254. FEMA's website that tracks its implementation of DRRA has included an implementation update for Section 1216(a) and (b), which states that "FEMA Instruction [was] updated May 14, 2019" and that "[i]nformation on how to apply for a waiver [was] added to debt letters" (FEMA, "Disaster Recovery Reform Act of 2018," last updated June 11, 2019, https://www.fema.gov/disaster-recovery-reform-act-2018).

[135] §2(d)(2) of the Improper Payments Information Act of 2002 (IPIA, P.L. 107-300) defines *improper payments* as "any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) ... and includes any payment to an ineligible recipient, any payment for an ineligible service, any duplicate payment.... " For more information, see CRS Report R45257, *Improper Payments in High-Priority Programs: In Brief*, by Garrett Hatch. Applicable federal laws include the Debt Collection Improvement Act of 1996 (DCIA), IPIA, Improper Payments Elimination and Recovery Act of 2010 (IPERA), and Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA).

[136] §2(a) of IPIA, P.L. 107-300; §2(a)(1) of IPERA, P.L. 111-204.

[137] §2(h)(E) of IPERA, P.L. 111-204. In addition, the regulatory provisions included in 31 U.S.C. §§3711 et seq.—Claims of the United States Government—influence how FEMA addresses the recoupment of funding provided to recipients of Individual Assistance.

[138] See U.S. Office of Management and Budget (OMB), Annual Improper Payments Datasets, "Payment Accuracy 2015 Dataset," https://paymentaccuracy.gov/resources/#data (note: see FY2015 Root Cause Results ($ in millions) tab); see also OMB, Annual Improper Payments Datasets, "Payment Accuracy 2017 Dataset," https://paymentaccuracy.gov/resources/#data (note: see All Program Results tab).

[139] FEMA, *IAPPG*, p. 164; see also IPIA, P.L. 107-300; IPERA, P.L. 111-204; 31 U.S.C. §§3711 et seq. After trying to collect improperly awarded funds, the FEMA Administrator may seek to collect by administrative offset. 31 U.S.C. §3701 defines *administrative offset* as "withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim." Additionally, there is no limitation on the period within which an offset may be initiated or taken (31 U.S.C. §3716(a) and (e)).

[140] FEMA, *IAPPG*, pp. 164-166. Note that "FEMA will not initiate recoupment activity for any potential debt valued less than $250.00 [because the cost of recovery will exceed the amount owed] unless a significant enforcement principle is at stake" (e.g., if the assistance was obtained through fraudulent means).

FEMA provided actual notice to the debtors" led to the passage of the Disaster Assistance Recoupment Fairness Act of 2011 (DARFA, Division D, Section 565 of the Consolidated Appropriations Act, 2012, P.L. 112-74).[141] DARFA provided FEMA with the discretionary authority to waive debts arising from improper payments for disasters declared between August 28, 2005, and December 31, 2010—which included Hurricanes Katrina and Rita, as well as other disasters.[142]

DRRA Section 1216(a) mirrors the factors included in DARFA. Following DRRA's enactment, FEMA may waive a debt related to *covered assistance*[143] if:

- distributed in error by FEMA;
- there was no fault on behalf of the debtor; and
- collection would be "against equity and good conscience."[144]

This section is retroactive, and applies to major disasters or emergencies declared on or after October 28, 2012.[145]

Thus, DRRA Section 1216(a) expands FEMA's discretionary ability with regard to debt collection by authorizing FEMA to waive the collection of a debt as long as the above-listed factors are also satisfied—the exception is if the debt involves fraud, a false claim, or

[141] Department of Homeland Security Office of Inspector General (DHS IG), *FEMA's Efforts to Recoup Improper Payments in Accordance with the Disaster Assistance Recoupment Fairness Act of 2011 (6)*, OIG-13-1001, June 2013, pp. 5-6, https://www.oig.dhs.gov/assets/Mgmt/2013/OIG_13-100_Jun13.pdf.

[142] Disaster Assistance Recoupment Fairness Act of 2011 (DARFA, Division D, §565 of the Consolidated Appropriations Act, 2012, P.L. 112-74). The State of Louisiana received a major disaster declaration for Hurricane Katrina on August 29, 2005 (see FEMA, Louisiana Hurricane Katrina (DR-1603), last updated November 1, 2005, https://www.fema.gov/disaster/1603). During this period, FEMA made improper payments totaling more than $418.3 million (as estimated by FEMA), and FEMA determined there was "sufficient justification" not to recoup improper payments totaling approximately $225 million; however, the DHS IG found that FEMA lacked adequate documentation for $58 million of the $225 million (DHS IG, FEMA's Efforts to Recoup, p. 3). Still, the DHS IG found that FEMA's use of its discretionary authority to recoup improper payments in accordance with DARFA was cost effective given the circumstances (noting, however, that it would have been more cost effective to attempt to recoup from all debtors who received improper payments) (DHS IG, FEMA's Efforts to Recoup, p. 6.), because FEMA collected more from debtors who did not meet the DARFA requirements than the agency expended on DARFA-related activities (DHS IG, FEMA's Efforts to Recoup, pp. 5-6).

[143] §1216(a)(1) of DRRA, P.L. 115-254. The term *covered assistance* refers to assistance provided under Stafford Act Section 408—Federal Assistance to Individuals and Households in relation to a major disaster or emergency that is declared by the President under Stafford Act Sections 401—Procedure for Declaration (Major Disaster) or 501—Procedure for Declaration (Emergency), respectively, on or after October 28, 2012 (note that this date differs from that included in DRRA §1216(b)(2)).

[144] §1216(a)(2) of DRRA, P.L. 115-254.

[145] FEMA, "Disaster Declarations by Year: Major Disaster Declaration," 2012, last accessed May 6, 2019, https://www.fema.gov/disasters/year/2012?field_dv2_declaration_type_value=DR; see also FEMA, "Disaster Declarations by Year: Emergency Declaration," 2012, last accessed May 6, 2019, https://www.fema.gov/disasters/year/2012?field_dv2_declaration_type_value=EM. The application of this section to major disasters or emergencies declared on or after October 28, 2012, includes the major disaster declarations for Hurricane Sandy in New York (DR-4085), New Jersey (DR-4086), and Connecticut (DR-4087), which were declared on October 29, 2012; as well as Rhode Island (DR-4089), which was declared on November 2, 2012; Delaware (DR-4090), which was declared on November 15, 2012; Maryland (DR-4091), which was declared on November 19, 2012; Virginia (DR-4092), which was declared on November 25, 2012; West Virginia (DR-4093), which was declared on November 26, 2012; and New Hampshire (DR-4095), which was declared on November 27, 2012. It also applies to some, but not all, of the emergency declarations for Hurricane Sandy, including in Pennsylvania (EM-3356), which was declared on October 28, 2012.

misrepresentation by the debtor or party having an interest in the claim.[146] However, if FEMA's distributions of covered assistance based on federal agency error exceed 4% of the total amount of covered assistance distributed in any 12-month period, then the DHS IG, charged with monitoring the distribution of covered assistance, shall remove FEMA's waiver authority based on an excessive error rate.[147] That said, according to the House Transportation and Infrastructure Committee's *DRRA Report*, "FEMA has implemented controls to avoid improper payments ... [and] FEMA's current error rate for improper payments to individuals is less than two percent."[148]

It is unclear how FEMA will review and process waivers of improper payments, although FEMA may use the DHS IG's recommendations—put forth post-DARFA—for reviewing and processing future debt recoupment cases as outlined in its *FEMA's Efforts to Recoup Improper Payments in Accordance with the Disaster Assistance Recoupment Fairness Act of 2011* report.[149] FEMA may also consider issuing a rulemaking and/or policy guidance to

- require that FEMA's comprehensive quality assurance review procedures apply to the review of recoupment cases, per the DHS IG's recommendation;[150]
- establish an audit trail for FEMA waiver of recoupment decisions, per the DHS IG's recommendation;[151] and
- clarify the considerations for approving a waiver (e.g., defining the circumstances under which collection of the debt would be "against equity and good conscience"), which may be especially important given that disaster survivors may face financial hardship if required to repay assistance that they have already spent on recovering from a disaster.[152]

Prohibition on Collecting Certain Assistance

DRRA Section 1216(b) restricts FEMA's ability to recoup assistance provided under Stafford Act Section 408—Federal Assistance to Individuals and Households.[153] Specifically, Section 1216(b) states:

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[146] §1216(a)(2)(B) of DRRA, P.L. 115-254. In order to be eligible for the Individuals and Households Program, an applicant—whether the person is an owner or renter—must prove that they occupied the disaster-damaged primary residence in order to receive temporary housing assistance and some types of ONA (see FEMA, *IAPPG*, pp. 52-54). Thus, providing false documentation to FEMA in order to get the agency to incorrectly verify the applicant's occupancy would be an example of fraud/false claim/misrepresentation by the applicant.

[147] §1216(a)(3) of DRRA, P.L. 115-254.

[148] House Transportation and Infrastructure, *DRRA Report*, p. 18.

[149] The DHS IG found that recipients who were granted waivers by FEMA pursuant to DARFA did not always have adequate support to justify the waiver. The DHS IG went on to state that, in order to improve its quality control for processing such cases in the future, "FEMA needs to ensure its adjudicators adequately assess debt cases for inconsistencies; check and compare the debt to other registrations for duplication of benefits; and ensure proof of occupancy, primary residence and other areas that were prime causes for improper payments." FEMA must also "improve its tracking of disaster assistance cases," including maintaining records and documentation for each registrant, and "improve its quality assurance assessment plans for reviewing recoupment cases." DHS IG, *FEMA's Efforts to Recoup*, pp. 4, 8, and 9.

[150] DHS IG, *FEMA's Efforts to Recoup*, p. 11.

[151] DHS IG, *FEMA's Efforts to Recoup*, p. 11.

[152] House Transportation and Infrastructure, *DRRA Report*, p. 28; see also §1216(a)(2)(A) of DRRA, P.L. 115-254.

[153] §1216(b) of DRRA, P.L. 115-254. FEMA's website that tracks its implementation of DRRA has included an implementation update for Section 1216(a) and (b), which states that "FEMA Instruction [was] updated May 14, 2019" and that "[i]nformation on how to apply for a waiver [was] added to debt letters" (FEMA, "Disaster Recovery Reform

> unless there is evidence of civil or criminal fraud, [FEMA] **may not** take any action to recoup *covered assistance* ...[154] if the receipt of such assistance occurred on a date that is more than 3 years before the date on which the Agency first provides to the recipient written notification of an intent to recoup [emphasis added].

This section is retroactive, and applies to major disasters or emergencies declared on or after January 1, 2012.[155]

According to the House Transportation and Infrastructure Committee's *DRRA Report*, this provision "will help ensure that FEMA initiates any collection actions as quickly as possible, reduce administrative costs, and provide more certainty to individuals recovering from disasters."[156] FEMA stated that the agency's understanding of this provision is that it establishes a three-year statute of limitations on the agency's ability to recoup debts provided under IHP.[157] Despite apparent congressional[158] and agency intent, FEMA's guidance states that:

> [w]hile there is no statute of limitations on initiating recoupment of IHP debt owed to the U.S. Government through administrative means, FEMA's goal is to notify applicants of any potential debt owed within three years after the date of the final IHP Assistance payment. FEMA's failure to meet this goal will not preclude it from initiating recoupment of potential debt when otherwise appropriate.... FEMA may notify applicants of any potential debt beyond three years after the date of the final IHP Assistance payment in cases where it considers recovery of funds to be in the best interest of the Federal government.... [159]

Congress may require FEMA to update its guidance to reflect DRRA Section 1216(b).

Additionally, the legislative language in DRRA Section 1216(b) may result in confusion when interpreting whether the section is discretionary or mandatory. This is because the legislation

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Act of 2018").

[154] §1216(b)(2) of DRRA, P.L. 115-254. The term *covered assistance* refers to assistance provided under Stafford Act Section 408—Federal Assistance to Individuals and Households in relation to a major disaster or emergency that is declared by the President under Stafford Act Sections 401—Procedure for Declaration (Major Disaster) or 501—Procedure for Declaration (Emergency), respectively, on or after January 1, 2012 (note that this date differs from that included in DRRA §1216(a)(1)).

[155] FEMA, "Disaster Declarations: Major Disaster," 2012; FEMA, "Disaster Declarations: Emergency," 2012. The application of this section to major disasters or emergencies declared on or after January 1, 2012, includes the emergency and major disaster declarations for Hurricanes Isaac and Sandy, as well as other significant incidents that occurred in 2012, including severe storms, tornadoes, straight-line winds, flooding, wildfires, and winter storms.

[156] House Transportation and Infrastructure, *DRRA Report*, p. 18. With regard to DRRA Section 1216(b), according to both HSGAC's *DRRA Report* and the House Transportation and Infrastructure Committee's *DRRA Report*, the Government Accountability Office (GAO) reported that "about 3 percent of the approximately $1.6 billion spent by FEMA for individual assistance between 2012 and 2014 for Hurricane Sandy relief were improper or fraudulent," and the Congressional Budget Office (CBO) estimated that less than 5% of improper payments made to individuals and households between 2012 and 2014 were the result of fraud (HSGAC, *DRRA Report*, pp. 22-23; House Transportation and Infrastructure, *DRRA Report*, pp. 27-28). Thus, using recoupment rate information from FEMA, the CBO estimates that approximately $30 million in improper payments can no longer be collected (note: the estimate is about $27 million per the HSGAC, *DRRA Report*, and $30 million per the House Transportation and Infrastructure, *DRRA Report*), but this has no net effect on direct spending over the 2019-2028 period because the amounts would have been available to FEMA for future disaster relief payments and fewer collections reduce outlay (HSGAC, *DRRA Report*, pp. 22-23 (note, however, that there is a $1 million cost over the 2019-2023 period because spending lags recoupment)); House Transportation and Infrastructure, *DRRA Report*, p. 28 (note that House Transportation and Infrastructure notes that the $1 million cost is over the period of 2019-2022)).

[157] Telephone conversation coordinated with FEMA Office of Congressional Affairs staff, May 9, 2019.

[158] House Transportation and Infrastructure, *DRRA Report*, p. 18.

[159] FEMA, *IAPPG*, p. 170.

states that FEMA "*may* not take any action to recoup covered assistance ... "—as opposed to FEMA "*shall* not take any action to recoup covered assistance.... " Thus, confusion may exist despite the apparent congressional intent that FEMA should not be able to take any action to recoup covered assistance three years after its receipt and the fact that FEMA has stated it interprets the provision as being mandatory.[160] One action available to Congress is to clarify, through legislation, that this section is mandatory (if that is the intent of Congress) in order to avoid potential ambiguity when interpreting the law.

An additional consideration with regard to this provision is that the three-year window to recoup IHP payments will be different for each award to an individual/household, and this will likely pose an administrative challenge for FEMA given the volume of awards provided under the IHP program.

Statute of Limitations—Public Assistance

DRRA Section 1216(c) amends Stafford Act Section 705—Disaster Grant Closeout Procedures to change how the statute of limitations for Public Assistance (PA)[161] is defined. Prior to DRRA's enactment, the statute of limitations on FEMA's ability to recover payments made to a state or local government was three years after the date of transmission of the final expenditure report for the *disaster or emergency*.[162] DRRA amends the statute of limitations such that no administrative action to recover payments can 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 [emphasis added]."[163] Additionally, this provision applies retroactively to disaster or emergency assistance provided on or after January 1, 2004, and any pending administrative actions were terminated as of the date of DRRA's enactment, if prohibited under Stafford Act Section 705(a)(1), as amended by DRRA.[164]

It may take years to close all of the projects associated with a disaster, and, prior to DRRA, FEMA could 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. This post-DRRA project-by-project statute of limitations is a significant change that has the potential to ease the administrative and financial burden that the management of disaster recovery programs places on state, territorial, and Indian tribal governments because it creates certainty as to the projects that may be subject to recoupment. It may also incentivize the timely closeout of PA projects by state and local governments, which may also ease FEMA's administrative and financial burdens.

[160] Telephone conversation coordinated with FEMA Office of Congressional Affairs staff, May 9, 2019.

[161] §1216(c) of DRRA, P.L. 115-254, as it amends §705 of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5205.

[162] 42 U.S.C. §5205(a)(1) (2017), https://www.govinfo.gov/content/pkg/USCODE-2017-title42/pdf/USCODE-2017-title42-chap68-subchapV-sec5205.pdf.

[163] 42 U.S.C. §5205(a)(1).

[164] §1216(c) of DRRA, P.L. 115-254, as it amends §705(a)(1) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5205(a)(1).

Floodplain Management and Flood Insurance[165]

Section 1206(a): Eligibility for Code Implementation and Enforcement

DRRA Section 1206(a) amends Stafford Act Section 402—General Federal Assistance[166] to allow state and local governments to use general federal assistance funds for the administration and enforcement of building codes and floodplain management ordinances, including inspections for substantial damage[167] compliance. If a building in a Special Flood Hazard Area (SFHA)[168] is determined to be substantially damaged, it must be brought into compliance with local floodplain management standards. Local communities can require the building to be rebuilt to current floodplain management requirements even if the property previously did not need to do so. For instance, the new compliance standard may require the demolition and elevation of the rebuilt building to above the Base Flood Elevation.[169]

FEMA does not make a determination of substantial damage; this is the responsibility of the local government, generally by a building department official or floodplain manager. Similarly, the enforcement of building codes and floodplain management ordinances are the responsibility of local government. Particularly following a major flood, communities may be required to assess a large number of properties at the same time, and, as a result, additional resources may be needed. This provision affords an additional source of funding to support communities in carrying out such activities.

Section 1207(b): Program Improvements

DRRA Section 1207(b) amends Stafford Act Section 406(d)(1)—Repair, Restoration, and Replacement of Damaged Facilities[170] to provide relief from a reduction in disaster assistance for certain public facilities and private nonprofit facilities with multi-structure campuses which were damaged by disasters in 2016 to 2018. Applicants for Public Assistance (PA) for repair, restoration, reconstruction, and replacement are required to obtain flood insurance on damaged insurable facilities (buildings, equipment, contents, and vehicles) as a condition of receiving PA grant funding. Insurance coverage must be subtracted from all applicable PA grants in order to avoid duplication of financial assistance. In addition, the applicant must maintain flood insurance on these facilities in order to be eligible for PA funding in future disasters, whether or not a facility is in the SFHA. If an eligible insurable facility damaged by flooding is located in a SFHA that has been identified for more than one year and the facility is not covered by flood insurance or is underinsured, FEMA will reduce the amount of eligible PA funding for flood losses in the SFHA by the maximum amount of insurance proceeds that would have been received had the

[165] This section authored by Diane P. Horn, Analyst in Flood Insurance and Emergency Management, Government and Finance Division, Federalism and Emergency Management Section.

[166] 42 U.S.C. §5170a.

[167] 44 C.F.R. §59.1 defines *substantial damage* as damage of any origin sustained by a structure in a Special Flood Hazard Area (SFHA) whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the structure's market value before the damage occurred.

[168] An SFHA is defined by FEMA as an area with a 1% or greater risk of flooding every year.

[169] The Base Flood Elevation is the elevation of surface water resulting from a flood that has a 1% chance of being equaled or exceeded in any given year.

[170] 42 U.S.C. §5172(d)(1).

buildings and contents been fully covered by a standard National Flood Insurance Program (NFIP) policy. For nonresidential buildings, this is currently a maximum of $500,000 for contents and $500,000 for the building.[171] The Stafford Act previously required that this reduction in disaster assistance should be applied to each individual building in the case of multi-unit campuses, which could result in a significant reduction in PA funding for entities with uninsured multi-structure campuses.

The new provision in DRRA provides that the reduction in assistance shall not apply to more than one building of a multi-structure educational, law enforcement, correctional, fire, or medical campus. This amendment applies to disasters declared between January 1, 2016, and December 31, 2018. This means that organizations without flood insurance that had Public Assistance funding reduced under the pre-DRRA Stafford Act provisions will have funding restored for floods such as the 2016 Louisiana floods, and Hurricanes Matthew, Harvey, Irma, Maria, and Florence.

Section 1240: Report on Insurance Shortfalls

DRRA Section 1240 requires FEMA to submit a report to Congress not later than two years after enactment, and each year after until 2023, on Public Assistance self-insurance shortfalls. As described in "Section 1207(b): Program Improvements," applicants for PA for repair, restoration, reconstruction, and replacement in an SFHA are required to obtain flood insurance on damaged insurable facilities as a condition of receiving PA grant funding, and maintain insurance on these facilities in order to be eligible for PA funding in future disasters. However, an applicant may apply in writing to FEMA to use a self-insurance plan to comply with the insurance requirement. The details required for the self-insurance plan are set out in FEMA guidance.[172] The DHS IG has issued four reports on applicants' compliance with PA insurance requirements that have identified concerns with applicant compliance with these requirements and FEMA's tracking of applicants' compliance.[173] However, these reports have not focused specifically on self-insurance. The new reports under DRRA Section 1240 will include information on the number of instances and the estimated amounts involved, by state, in which self-insurance amounts have been insufficient to address flood damages.

[171] See CRS Report R44593, *Introduction to the National Flood Insurance Program (NFIP)*, by Diane P. Horn and Baird Webel.

[172] See FEMA, *Public Assistance Policy on Insurance*, FP 206-086-1, Washington, DC, June 29, 2015, pp. 1-11, https://www.fema.gov/media-library-data/1436442397459-a1a4197f9528308d6d190ceb14418327/FP206-086-1_PublicAssistancePolicyInsurance_062915.pdf.

[173] See DHS IG, *Compliance with Public Assistance Program's Insurance Purchase Requirement*, I-01-01, Washington, DC, January 2001; DHS IG, *FEMA's Process for Tracking Public Assistance Insurance Requirements*, OIG-12-18, Washington, DC, December 2011, https://www.oig.dhs.gov/assets/Mgmt/OIG_12-18_Dec11.pdf; DHS IG, *Verification Review: FEMA's Lack of Process for Tracking Public Assistance Insurance Requirements Places Billions of Tax Dollars at Risk*, OIG-17-50-VR, Washington, DC, June 9, 2017, https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-50-VR-Jun17.pdf; and DHS IG, *Special Report: Lessons Learned from Previous Audit Reports on Insurance Under the Public Assistance Program*, OIG-18-12, Washington, DC, November 7, 2017, https://www.oig.dhs.gov/sites/default/files/assets/2017-11/OIG-18-12-Nov17.pdf.

Other Provisions

Section 1224: Agency Accountability[174]

DRRA Section 1224 amends Title IV of the Stafford Act to establish a new section, Section 430—Agency Accountability, addressing public assistance, mission assignments, disaster relief monthly reports, contracts, and the collection of public assistance recipient and subrecipient contracts.[175]

Subsection (a) of the new Stafford Act Section 430, established by DRRA Section 1224, requires the FEMA Administrator to publish on the FEMA website award information for grants awarded under Stafford Act Section 406—Repair, Restoration, and Replacement of Damaged Facilities in excess of $1,000,000. For each such grant, FEMA shall provide the following information:

- FEMA region;
- declaration number;
- whether the grantee is a private nonprofit organization;
- damage category code;
- amount of the federal share obligated; and
- the date of the award.

Prior to DRRA's enactment, FEMA did not publish contract information on the FEMA website. Stafford Act Section 430(d) requires the FEMA Administrator to publish information about each contract executed by FEMA in excess of $1,000,000 on the FEMA website within the first 10 days of each month. For each such contract, FEMA shall provide the following information:

- contractor name;
- date of contract award;
- amount and scope of the contract;
- whether the contract was competitively bid;
- whether and why there was a no competitive bid;
- the authority used to bypass competitive bidding if applicable;
- declaration number; and
- the damage category code.

Section 430(d) also requires the FEMA Administrator to provide a report to the appropriate congressional committees on the number of contracts awarded without competition, reasons why there was no competitive bidding process, total amount of the no-competition contracts, and the applicable damage category codes for such contracts.

Section 430(e) requires the FEMA Administrator to initiate efforts to maintain and store information on contracts entered into by a Public Assistance recipient or subrecipient of funding through Stafford Act Sections 324—Management Costs, 403—Essential Assistance, 404—Hazard Mitigation, 406—Repair, Restoration, and Replacement of Damaged Facilities, 407—Debris Removal, 428—Public Assistance Program Alternative Procedures, and 502—Federal

[174] This section authored by Natalie Keegan, Analyst in American Federalism and Emergency Management Policy, Government and Finance Division, Federalism and Emergency Management Section.

[175] §1224 of DRRA, P.L. 115-254, adding a new §430 of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5189h.

Emergency Assistance for contracts with an estimated value of more than $1,000,000. Collected contract information shall include the following:

- disaster number;
- project worksheet number;
- category of work;
- name of contractor;
- date of the contract award;
- amount of the contract;
- scope of the contract;
- period of performance for the contract; and
- whether the contract was awarded through a competitive bid process.

The FEMA Administrator is required to make such collected information available to the DHS IG, the Government Accountability Office (GAO), and appropriate congressional committees upon request.[176] The FEMA Administrator is also required to submit a report to relevant committees within 365 days of DRRA's enactment on the efforts of FEMA to collect the required contract information (i.e., by October 5, 2019).[177] Prior to DRRA's enactment, FEMA did not appear to have comprehensive contract information to make available upon request and did not submit annual reports to Congress regarding collection of such information.

Section 1221: Closeout Incentives[178]

DRRA Section 1221 amends Stafford Act Section 705—Disaster Grant Closeout Procedures to authorize the FEMA Administrator to develop incentives and penalties relating to grant closeout activities to encourage grantees to close out disaster-related expenditures on a timely basis.[179] DRRA Section 1221 also requires the FEMA Administrator to improve closeout practices and reduce the time between awarding a grant under Stafford Act provisions and closing out expenditures for the award. The FEMA Administrator is also directed to issue regulations relating to facilitating grant closeout. Prior to DRRA's enactment, FEMA had discretion to engage in activities that would incentivize or penalize grantees for delayed closeouts. This provision made such activities a requirement rather than at FEMA's discretion. Congress designed Section 1221 to improve the timeliness of closeout procedures by limiting or preventing delays in the process.

Section 1225: Audit of Contracts[180]

DRRA Section 1225 prohibits the FEMA Administrator from reimbursing grantees for any activities made pursuant to a contract entered into after August 1, 2017, that prohibits the FEMA

[176] §1224 of DRRA, P.L. 115-254, adding §430 of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5189h.

[177] §1224 of DRRA, P.L. 115-254, adding §430 of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5189h.

[178] This section authored by Natalie Keegan, Analyst in American Federalism and Emergency Management Policy, Government and Finance Division, Federalism and Emergency Management Section.

[179] §1221 of DRRA, P.L. 115-254, as it amends §705 of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5205.

[180] This section authored by Natalie Keegan, Analyst in American Federalism and Emergency Management Policy, Government and Finance Division, Federalism and Emergency Management Section.

Administrator or the Comptroller General of the United States from auditing or reviewing all aspects relating to the contract.[181]

Section 1237: Certain Recoupment Prohibited[182]

DRRA Section 1237 directs FEMA to "deem any covered disaster assistance to have been properly procured, provided, and utilized, and shall restore any funding of covered disaster assistance previously provided but subsequently withdrawn or deobligated."[183] "Covered disaster assistance" is defined as assistance provided to a local government under Stafford Act Sections 403—Essential Assistance, 406—Repair, Restoration, and Replacement of Damaged Facilities, or 407—Debris Removal in which the DHS IG has made a determination, through an audit, that the following conditions were present:

> (A) the Agency deployed to the local government a Technical Assistance Contractor to review field operations, provide eligibility advice, and assist with day-to-day decisions;
>
> (B) the Technical Assistance Contractor provided inaccurate information to the local government; and
>
> (C) the local government relied on the inaccurate information to determine that relevant contracts were eligible, reasonable, and reimbursable.[184]

Section 1210: Duplication of Benefits[185]

DRRA Section 1210 amends Stafford Act Section 312(b) by providing the President the authority to waive the prohibition on duplication of benefits (upon a gubernatorial request) if the "waiver is in the public interest and will not result in waste, fraud, or abuse." When making the waiver decision, the President may consider (1) recommendations from the Administrator of FEMA or other agencies administering the duplicative program; (2) if granted, whether the assistance is cost effective; (3) "equity and good conscience"; and (4) "other matters of public policy considered appropriate by the President."[186]

Duplication of benefits has been an ongoing issue of congressional concern and DRRA Section 1210 is the most recent attempt to reduce hardships caused by duplication of benefits recoupment. Individuals and households often need to use multiple sources of assistance to fully recover from a major disaster. If the assistance exceeds their unmet disaster needs, then the assistance is considered a "duplication of benefits." Stafford Act Section 312(a)—Duplication of Benefits prohibits the "financial assistance to persons, business concerns, or other entities suffering losses as a result of a major disaster or emergency ... [for] which he has received financial assistance under any other program or from insurance or any other source."[187] Stafford Act Section 312(c) states that the recipient of duplicative assistance is liable to the United States and that the agency

[181] §1225 of DRRA, P.L. 115-254.

[182] This section authored by Natalie Keegan, Analyst in American Federalism and Emergency Management Policy, Government and Finance Division, Federalism and Emergency Management Section.

[183] §1237 of DRRA, P.L. 115-254.

[184] §1237(b)(2) of DRRA, P.L. 115-254.

[185] This section authored by Bruce R. Lindsay, Analyst in American National Government, Government and Finance Division, Federalism and Emergency Management Section.

[186] DRRA Section 1210 applies to any emergency or major disaster declared under the Stafford Act between January 1, 2016, and December 31, 2021.

[187] 42 U.S.C. §5155.

that provided the duplicative assistance is responsible for debt collection. The federal duplication of benefits policy is intended to prevent waste, fraud, and abuse of program assistance.[188]

44 C.F.R. §206.191 provides procedural guidance known as a "delivery sequence" to prevent the duplication of benefits between federal assistance programs such as FEMA's Individuals and Households Program and the Small Business Administration's (SBA's) Disaster Loan Program, state assistance programs, other assistance programs (e.g., volunteer programs), and insurance benefits (see **Figure 1**). An organization's position within the delivery sequence determines the order in which it should provide assistance and what other resources need to be considered before that assistance is provided. The regulation requires individuals to repay all duplicated assistance to the agency providing the assistance based on the delivery sequence hierarchy that outlines the order assistance should be provided. Critics have argued that the delivery sequence lacks specificity. For example, the U.S. Department of Housing and Urban Development's (HUD's) Community Development Block Grant—Disaster Recovery (CDBG-DR) Program, which is often duplicated with other assistance sources, is not listed in the delivery sequence.

Figure 1. Delivery Sequence

44 C.F.R. §206.191(d)(2)

FEMA

From Electronic Code of Federal Regulations e-CFR data is current as of March 13, 2019

(2) The delivery sequence is, in order of delivery:

1. (i) Volunteer agencies' emergency assistance (except expendable items such as clothes, linens, and basic kitchenware); insurance (including flood insurance);
2. (ii) Housing assistance pursuant to section 408 of the Stafford Act.
3. (iii) Small Business Administration and Farmers Home Administration disaster loans;
4. (iv) Other Needs assistance, pursuant to section 408 of the Stafford Act or its predecessor program, the Individual and Family Grant Program.
5. (v) Volunteer agencies' "additional assistance" programs; and
6. (vi) The "Cora Brown Fund."

Source: Based on CRS interpretation of 44 C.F.R. §206.191.

Note: Housing assistance under Section 408—Federal Assistance to Individuals and Households includes assistance to individuals and households who are displaced from their pre-disaster primary residences or whose pre-disaster primary residences are rendered uninhabitable, or with respect to individuals with disabilities, rendered inaccessible or uninhabitable as a result of a major disaster. Section 408 includes temporary housing assistance, as well as repairs. Other Needs Assistance (ONA) under Section 408 includes both SBA-dependent and non-SBA-dependent ONA. SBA-dependent ONA may be available for applicants who do not qualify for an SBA disaster loan, or whose loan amount is insufficient; this type of ONA includes personal property, transportation, and moving and storage assistance. Non-SBA-dependent ONA includes financial assistance for

[188] For more information on duplication of benefits, see CRS Report R44553, *SBA and CDBG-DR Duplication of Benefits in the Administration of Disaster Assistance: Background, Policy Issues, and Options for Congress*, by Bruce R. Lindsay and Eugene Boyd.

> medical, dental, funeral, childcare, and miscellaneous expenses. Cora Brown of Kansas City, MO, died in 1977. She left a portion of her estate to the United States to be used as a special fund to relieve human suffering caused by natural disasters. For more information on the Cora Brown Fund, see https://www.fema.gov/media-library-data/1434639028239-341e17807cb06b0bf000d21cc7552b2c/CoraBrown-FactSheet-final508.pdf.

However, in addition to prohibiting duplication of benefits, Stafford Act Section 312 also stipulates that assistance cannot be withheld. Section 312(b)(1) states:

> this section shall not prohibit the provision of federal assistance to a person who is or may be entitled to receive benefits for the same purposes from another source if such person has not received such other benefits by the time of application for federal assistance and if such person agrees to repay all duplicative assistance to the agency providing the federal assistance.[189]

The delivery sequence, therefore, is not rigid—it can be broken in certain cases. The most common example is when adhering to the delivery sequence prevents the timely receipt of essential assistance. In some cases, assistance can be provided more quickly by an organization or agency that is lower in the sequence than an agency or organization that is at a higher level. For example, SBA disaster loans can generally be processed more quickly than FEMA grants; CDBG-DR grants take longer still because CDBG-DR disaster funding generally requires Congress to pass an appropriation. Once appropriated, the funding is usually released to the state in the form of a block grant, which is then disbursed by the state to disaster survivors.[190]

The underlying rationale for providing assistance when it becomes immediately available instead of rigidly adhering to the delivery sequence is to make sure disaster survivors receive aid as quickly as possible. Advocates of this view argue that preventing duplication of benefits is of secondary importance—it can be rectified and recouped later. This practice, however, has led to problems, particularly for individuals and households. In some cases, the federal government may fail to identify the duplication. In others cases, it may take a prolonged period of time to identify the duplication and the recoupment notification that they owe money to the federal government may come as a surprise to disaster survivors who did not realize they exceeded their allowable assistance. In some cases they may have spent all of the assistance on recovery, and repaying duplicative assistance constitutes a financial burden to the disaster survivor.

One of the most significant changes instituted by DRRA Section 1210 is that it prohibits the President from determining loans as duplicative assistance provided all federal assistance is used toward loss resulting from an emergency or major disaster under the Stafford Act. This arguably removes SBA disaster loans from the delivery sequence. However, the rulemaking on this policy has not been issued. Thus, it remains to be seen how this provision of DRRA will be implemented.

Finally, DRRA Section 1210(a)(5) requires the FEMA Administrator, in coordination with relevant federal agencies, to provide a report with recommendations to improve "the comprehensive delivery of disaster assistance to individuals following a major disaster or emergency declaration." The report must include (1) actions planned or taken by the agencies as well as legislative proposals to improve coordination between agencies with respect to delivering disaster assistance; (2) a clarification of the delivery sequence; (3) a clarification of federal-wide interpretation of Stafford Act Section 312 when providing assistance to individuals and households; and (4) recommendations to improve communication to disaster assistance

[189] 42 U.S.C. §5155.

[190] For more information on CDBG-DR, see CRS Report RL33330, *Community Development Block Grant Funds in Disaster Relief and Recovery*, by Eugene Boyd.

applicants, including the breadth of programs available and the potential impacts of utilizing one program versus another.[191]

Section 1239: Cost of Assistance Estimates; Section 1232: Local Impact[192]

DRRA Section 1239—Cost of Assistance Estimates and Section 1232—Local Impact both require FEMA to review and initiate a rulemaking to update the factors considered when evaluating a governor's request for a major disaster declaration, including how FEMA estimates the cost of major disaster assistance. They also require FEMA to consider anything that may affect a local jurisdiction's capacity to respond to a disaster. Section 1232 in particular requires FEMA to give greater consideration to severe local impact or recent multiple disasters.

Both sections address the way FEMA has made major disaster recommendations to Presidents. FEMA uses factors about the severity of the incident (including how the state was affected by the incident) to assess the state's need for federal assistance.[193] The estimated cost of assistance (also known as the per capita threshold) has been a key factor used by FEMA to evaluate the disaster's severity and to determine if the state has the capacity to handle the disaster without federal assistance. Two thresholds are used for estimated cost of assistance: (1) $1 million in public infrastructure damages and (2) a formula based on the state's population (according to the most recent census data) and public infrastructure damages. Based on these thresholds, FEMA has generally recommended that a major disaster be declared if public infrastructure damages exceed $1 million and meet or exceed $1.50 per capita.[194]

The underlying rationale for using a per capita threshold is that state fiscal capacity should be sufficient to deal with the disaster if damages and costs fall under the per capita amount. However, concerns related to relying on the per capita threshold include that:

- the per capita threshold may be difficult to reach for some states. For example, a rural area in a highly populated state may be denied federal disaster assistance because damages and costs do not exceed the per capita threshold;
- these incidents still warrant federal assistance because they overwhelm local response and recovery capacity in spite of not exceeding the statewide threshold; and
- the application of the per capita threshold is inequitable because the same incident may affect multiple states but only result in a major disaster declaration for some states by virtue of differences in state population.

Pursuant to DRRA Section 1239, within two years of DRRA's enactment (i.e., by October 5, 2020), FEMA is required to initiate a rulemaking to update the factors considered when evaluating a governor's request for a major disaster declaration, including how the cost of assistance is estimated, as well as other impacts on the jurisdiction's response capacity. As part of

[191] DRRA Section 1216, P.L. 115-254.

[192] This section authored by Bruce R. Lindsay, Analyst in American National Government, Government and Finance Division, Federalism and Emergency Management Section.

[193] For more information about the factors, see CRS Report R44977, *Preliminary Damage Assessments for Major Disasters: Overview, Analysis, and Policy Observations*, by Bruce R. Lindsay.

[194] FEMA, "Notice of Adjustment of Statewide per Capita Impact Indicator," 83 *Federal Register* 53279, October 22, 2018, last accessed July 15, 2019, https://www.govinfo.gov/content/pkg/FR-2018-10-22/pdf/2018-22888.pdf.

the review and rulemaking, FEMA may consider whether the per capita threshold is an appropriate mechanism for evaluating capacity, and additional information, such as the results of the 2020 U.S. Census, may factor into the final rule. DRRA Section 1232 also requires FEMA to adjust agency policy and regulations to grant greater consideration to severe local impact or recent multiple disasters, which may enable jurisdictions that struggle to reach the per capita threshold to provide evidence supporting the request for a major disaster declaration as no single factor is dispositive and the determination to grant a request for a major disaster is at the President's discretion.

FEMA currently uses nine factors to evaluate a state or territory's request for a major disaster declaration (see **Table 2**).[195] To some, these factors entail a more nuanced evaluation of major disaster requests by assessing both damages and state and local resources. However, it appears that the per capita threshold is still being applied to determine the "amount and type of damages caused by the incident." If that is the case, per capita damages may still figure more prominently than other factors—such as local impacts—when making major disaster declaration recommendations to the President.

Table 2. Factors for Major Disaster Recommendations

The Amount and Type of Damages Caused by the Incident
The Impact of the Damages on Affected Individuals, the State, and Local Governments
The Available Resources of the State and Local Governments and Other Disaster Relief Organizations
The Extent and Type of Insurance in Effect to Cover the Losses
Assistance Available from other Federal Programs and other Sources
Imminent Threats to Public Health and Safety
Recent Disaster History in the State
Hazard Mitigation measures taken by the State or Local Governments (especially implementation of measures required as a result of previous major disaster declarations)
Other Pertinent Factors

Source: Based on CRS interpretation of FEMA Revised Regulations as of October 1, 2017, 44 C.F.R. §206.37(c)(1).

Section 1219: Right of Arbitration[196]

DRRA Section 1219 amends Stafford Act Section 423—Appeals of Assistance Decisions to add a right of arbitration.[197] Per Stafford Act Section 423, applicants for assistance have the right to

[195] 44 C.F.R. §206.37(c)(1).

[196] This section authored by Elizabeth M. Webster, Analyst in Emergency Management and Disaster Recovery, Government and Finance Division, Federalism and Emergency Management Section.

[197] §1219(c) of DRRA, P.L. 115-254, as it amends §423(d) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5189a(d).

appeal decisions regarding "eligibility for, from, or amount of assistance" within 60 days after receiving notification of award or denial of award.[198] FEMA then has to render a decision within 90 days of receiving a notice of appeal.[199] Prior to DRRA, the appeal process outlined in the Stafford Act only provided a way for FEMA to review its own decisions, and did not include a way for applicants to bring claims before an independent arbiter. The need for arbitration, however, was recognized by Congress[200] following Hurricanes Katrina and Rita, which made landfall in 2005, due to disputes that arose from public assistance payments under Stafford Act Sections 403—Essential Assistance, 406—Repair, Restoration, and Replacement of Damaged Facilities, and 407—Debris Removal.[201] Post-Hurricanes Katrina and Rita, the arbitration process was established pursuant to the authority granted under Section 601 of the American Recovery and Reinvestment Act of 2009 (ARRA, P.L. 111-5).[202]

> Notwithstanding any other provision of law, the President shall establish an arbitration panel under the Federal Emergency Management Agency public assistance program to expedite the recovery efforts from Hurricanes Katrina and Rita within the Gulf Coast Region. The arbitration panel shall have sufficient authority regarding the award or denial of disputed public assistance applications for covered hurricane damage under section 403, 406, or 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170b, 5172, or 5173) for a project the total amount of which is more than $500,000.[203]

FEMA's public assistance appeal process remains in effect following DRRA's enactment. In addition, post-DRRA a right of arbitration has been added to Stafford Act Section 423 under the authority granted under ARRA Section 601.[204] Applicants, which are states in the context of this section, may request arbitration in order to "dispute the eligibility for assistance or repayment of assistance provided for a dispute of more than $500,000 for any disaster that occurred after January 1, 2016."[205] (Applicants in rural areas are eligible to pursue arbitration if the amount of assistance is $100,000.[206]) FEMA's *Public Assistance Appeals and Arbitration Under the Disaster Recovery Reform Act* fact sheet notes that applicants may file a second appeal or request arbitration pursuant to Section 423(d) either (1) within 60 days after receipt of the first appeal

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[198] 44 C.F.R. §206.206(c); see also 42 U.S.C. §5189a(a).

[199] 44 C.F.R. §206.206(c)(3); see also 42 U.S.C. §5189a(b).

[200] General Provisions—This Title, §601 of P.L. 111-5; see also Bill Barrow, "Landrieu Says Hurricane Relief Arbitration Panel Coming Within Weeks," *The Times-Picayune*, June 1, 2009, https://www.nola.com/politics/2009/06/landrieu_says_hurricane_relief.html.

[201] For example, when Charity Hospital, located in New Orleans, LA, was severely damaged, a dispute between FEMA and the grantee arose because the grantee felt replacement of the hospital was needed, rather than repair. Arbitration to settle the dispute then occurred before the Civilian Board of Contract Appeals (CBCA), per the arbitration process, and the Arbitration Agreement was the complete resolution of all claims regarding Charity Hospital. FEMA, "Appeal Timeliness: Second Appeal Brief, PA ID# 025-70275-00; LSU Health Care Services Division Medical Center of Louisiana at New Orleans, PW ID# RPA; Appeal Timeliness," Appeal Brief, October 23, 2017, https://www.fema.gov/appeal/319671; see also FEMA, "Appeal Timeliness: Second Appeal Analysis, PA ID# 025-70275-00; LSU Health Care Services Division Medical Center of Louisiana at New Orleans, PW ID# RPA; Appeal Timeliness," Appeal Analysis, October 23, 2017, https://www.fema.gov/appeal/319671?appeal_page=analysishttps://www.fema.gov/appeal/319671.

[202] 42 U.S.C. §5189a(d)(5)(A).

[203] General Provisions—This Title, §601 of P.L. 111-5.

[204] 42 U.S.C. §5189a(d); see also General Provisions—This Title, §601 of P.L. 111-5.

[205] 42 U.S.C. §5189a(d)(1).

[206] 42 U.S.C. §5189a(d)(3) and (4). As defined in this section, the term *rural area* means an area with a population of less than 200,000 outside an urbanized area.

decision (if the decision is not appealed or arbitration is not requested, then the first level appeal decision becomes the final agency determination and the applicant no longer has a right to appeal or arbitrate); or (2) at any time after 180 days of filing a first level appeal if the applicant has not received a decision from the agency—in which case they may withdraw the first level appeal and request Section 423 arbitration.[207]

In the event an applicant requests arbitration, the Civilian Board of Contract Appeals (CBCA) will conduct the arbitration, and their decision shall be binding.[208] FEMA has stated that the Agency intends to "initiate rulemaking to implement Section 423 arbitration and revise 44 C.F.R. §206.206," including amending regulations that provide for only a first and second level appeal process.[209] In the interim, FEMA has stated that it will rely on the *Public Assistance Appeals and Arbitration Under the Disaster Recovery Reform Act* fact sheet and the CBCA's *Interim Fact Sheet*.[210] The CBCA published proposed rules of procedure to implement Section 423 arbitration in the *Federal Register* on March 5, 2019.[211] Additionally, while new regulations are being promulgated, FEMA will provide information on how applicants may request either a second level appeal or arbitration when FEMA provides first level appeal denials for disputes arising from declarations for disasters occurring after January 1, 2016.[212]

There is disagreement regarding whether the arbitration process expedites dispute resolution. The House Transportation and Infrastructure Committee's *DRRA Report* states that the CBCA panel provides a faster resolution, citing that arbitration was used as a tool for resolving disputes following both Hurricanes Katrina and Sandy to facilitate recovery.[213] FEMA, however, in an

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[207] FEMA, *Public Assistance Appeals and Arbitration Under the Disaster Recovery Reform Act*, fact sheet, March 2019, https://www.fema.gov/media-library-data/1553698031170-126e5dcfa4f1a27b799475831c5168df/Section1219ArbitrationFactSheet3.27.19final.pdf.

[208] 42 U.S.C. §5189a(d)(1); see also 44 C.F.R. §206.209.

[209] FEMA, *Public Assistance Appeals and Arbitration Under the Disaster Recovery Reform Act*, fact sheet.

[210] FEMA, *Public Assistance Appeals and Arbitration Under the Disaster Recovery Reform Act*, fact sheet. The CBCA "Interim Fact Sheet on Arbitration of Public Assistance Eligibility or Repayment Under 42 U.S.C. §5189a(d)" is available at https://cbca.gov/files/FEMA-interim-fact-sheet.pdf.

[211] Civilian Board of Contract Appeals, General Services Agency, "Civilian Board of Contract Appeals; Rules of Procedure of the Civilian Board of Contract Appeals," 84 *Federal Register* 7861-7864, March 5, 2019, https://www.govinfo.gov/content/pkg/FR-2019-03-05/pdf/2019-03873.pdf.

[212] FEMA, *Public Assistance Appeals and Arbitration Under the Disaster Recovery Reform Act*, fact sheet.

[213] House Transportation and Infrastructure, *DRRA Report*, p. 18. In addition to the establishment of an arbitration panel following Hurricane Katrina per ARRA, Section 1105—Dispute Resolution Pilot Program—of the Sandy Recovery Improvement Act of 2013 (SRIA, Division B of P.L. 113-2) established a pilot program to allow applicants with an amount in dispute of not less than $1 million (adjusted annually to reflect changes in the Consumer Price Index for all Urban Consumers as published by the Department of Labor) to request the use of alternate dispute resolution, including arbitration by an independent review panel, to resolve disputes relating to eligible assistance under Stafford Act Section 403—Essential Assistance, Section 406—Repair, Restoration, and Replacement of Damaged Facilities, and Section 407—Debris Removal. SRIA Section 1105(d) also included the requirement that the Comptroller General of the United States submit a report analyzing the effectiveness of the program to HSGAC and the House Transportation and Infrastructure Committee, which was intended to include an assessment of whether the program expedited or delayed the disaster recovery process, and whether it increased or decreased the costs of administering Stafford Act Sections 403, 406, and 407, as well as a recommendation as to whether the program should be made a permanent authority. CRS contacted the GAO's Office of Congressional Relations via telephone on April 9, 2019, to inquire as to whether the report was completed, and if so, what the results were with regard to whether the dispute resolution pilot program expedited or delayed recovery and whether it increased or decreased costs. GAO confirmed that the study had not been conducted because there were no requests for the use of alternate dispute resolution pursuant to the pilot program. Additionally, FEMA confirmed that it did not receive any requests for arbitration under the Sandy Dispute Resolution Pilot Program (email correspondence from FEMA Congressional Affairs staff, April 19, 2019).

earlier version of its *Public Assistance Arbitration* fact sheet stated that the arbitration process often takes years to arrive at a resolution.[214] This may be, in part, because of the process required—some steps may take multiple weeks or months to complete—which includes:

- a first level appeal;
- the applicant opting into arbitration;
- submission of responses;
- the selection of the arbitration panel;
- the preliminary conference;
- the hearing and any follow-up; and
- the panel's rendering of the final decision.[215]

The length of the arbitration process may depend on the complexity of the disputed project and its associated costs for which the applicant is seeking an award of assistance. Additionally, the arbitration process may be costly as there are fees associated with the panel, experts, attorney's fees, and other fees, which are the responsibility of the parties, including both the applicant and FEMA.[216] According to the Senate HSGAC's *DRRA Report*, the Congressional Budget Office (CBO) estimates that "implementing this provision would cost $4 million over the 2019-2023 period" based on information provided by FEMA on the expected number of arbitration requests.[217] It is unclear, however, whether the evaluation of the cost of implementing this provision included considerations such as the individual cost of the project being arbitrated, the complexity of the project, and the nature of the dispute. Congress may consider tasking the Comptroller General of the United States with conducting a review of the arbitration process to evaluate its effectiveness, including whether arbitration expedites the disaster recovery process and if it is cost effective. Congress may also consider ways to improve the process's efficiency and effectiveness, if warranted based on the results of any such program evaluation.[218]

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[214] FEMA, *Public Assistance Arbitration*, fact sheet, last updated December 2018 (no longer available online). Additionally, FEMA, in email correspondence, stated that it found "the arbitration authorities under Katrina/Rita did not expedite the recovery process and resulted in increased costs.... One factor contributing to the long review process is that there are no restrictions on the documentation that an applicant can submit to an arbitration panel. Applicants can submit documentation that was not submitted for the initial determination, which often requires additional time for FEMA and the Panel to review the new information. Sixteen arbitrations took more than one year to resolve and there are six arbitrations where the decision took more than two years." Email correspondence from FEMA Congressional Affairs staff, April 19, 2019.

[215] 44 C.F.R. §206.209; see also FEMA, *Public Assistance Arbitration*, fact sheet.

[216] FEMA has stated that the agency will "pay the fees associated with the arbitration panel, the costs of any expert retained by the panel, and the arbitration facility costs, if any;" however, other expenses will be paid by the party incurring such costs. FEMA, *Public Assistance Appeals and Arbitration Under the Disaster Recovery Reform Act*, fact sheet; see also 44 C.F.R. §206.209(l). Additionally, FEMA stated that "[a]rbitrations have also frequently involved added costs because of the use of expert witnesses and reports for arbitration hearings. The primary reason Katrina/Rita applicants have continued, in small numbers, to resort to arbitration may be because the federal cost share for the entire Public Assistance program for Katrina and Rita was set by Congress at 100[%].... The 100% cost share for Katrina/Rita projects seems to incentivize disputes over eligibility, because applicants have little reason to contain costs" as they might pursuant to the standard cost share for Public Assistance, which is 75% federal and 25% nonfederal, with procedures to increase the federal cost share to 90%. The cost share "encourages applicants to consider the costs of a project when making decisions." Email correspondence from FEMA Congressional Affairs staff, April 19, 2019.

[217] HSGAC, *DRRA Report*, p. 21; House Transportation and Infrastructure, *DRRA Report*, p. 26. Additionally, according to the House Transportation and Infrastructure *DRRA Report*, the CBO estimates that the program would cost $3 million over the 2019-2022 period, based on information on expected staff and travel costs.

[218] This recommendation is modeled on SRIA Section 1105(d), which included the requirement that the Comptroller

Section 1218: National Veterinary Emergency Teams[219]

DRRA Section 1218 authorizes, but does not require, that the FEMA Administrator establish one or more national veterinary emergency teams at accredited colleges of veterinary medicine. Such a team(s) shall (1) deploy with Urban Search and Rescue (US&R) response teams to care for canine search teams, companion animals, service animals, livestock, and other animals; (2) recruit, train, and certify veterinary professionals, including veterinary students, regarding emergency response; (3) assist state governments, Indian tribal governments, local governments, and nonprofit organizations in emergency planning for animal rescue and care; and (4) coordinate with other federal, state, local, and Indian tribal governments, veterinary and health care professionals, and volunteers.

Veterinary professionals serve in several emergency support capacities—aiding in agriculture emergencies by controlling diseases in domestic animals; protecting natural resources by addressing wildlife health impacts; assisting with various emergency public health efforts, such as assuring food safety; and furnishing care to working animals such as search and rescue canines and service animals.

Several pre-existing authorities address veterinary support in emergencies in different contexts. The Stafford Act does not specifically mention veterinary services. However, among the work and services authorized for essential assistance is "provision of rescue, care, shelter, and essential needs—(i) to individuals with household pets and service animals; and (ii) to such pets and animals,"[220] which could include veterinary services. In addition, the Stafford Act requires state and local recipients of emergency preparedness planning grants to address the needs of individuals with household pets and service animals in their emergency preparedness plans.[221]

The federal department principally responsible for coordinating veterinary support in emergencies often depends upon the principal work performed, in particular whether it involves public health or animal health. Authority for the National Disaster Medical System (NDMS), an operational emergency response asset of the U.S. Department of Health and Human Services (HHS), does not expressly list which health professionals shall constitute NDMS teams. Rather, it states that the system is intended to "provide health services, health-related social services, other appropriate human services, and appropriate auxiliary services to respond to the needs of victims of a public health emergency…."[222] NDMS currently supports veterinary response teams.[223] Another HHS asset, the Commissioned Corps of the U.S. Public Health Service (USPHS), supports a veterinary professional category.[224] The U.S. Department of Agriculture (USDA) Animal and Plant Health

General of the United States submit a report analyzing the effectiveness of the program to HSGAC and the House Transportation and Infrastructure Committee. This report was not completed because there were no requests for the use of alternate dispute resolution pursuant to the pilot program (telephone conversation with GAO's Office of Congressional Relations, April 9, 2019; email correspondence from FEMA Congressional Affairs staff, April 19, 2019).

[219] This section authored by Sarah A. Lister, Specialist in Public Health and Epidemiology, Domestic Social Policy Division, Health Services and Research Section.

[220] §403(a)(3)(J) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5170b(a)(3)(J).

[221] §613(g) of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5196b(g).

[222] Public Health Service Act §2812; 42 U.S.C. §300hh–11.

[223] National Disaster Medical System, "National Veterinary Response Teams," last reviewed September 9, 2017, https://www.phe.gov/Preparedness/responders/ndms/ndms-teams/Pages/nvrt.aspx.

[224] Commissioned Corps of the U.S. Public Health Service, Veterinarian Professional Advisory Committee, "Home," last modified September 19, 2017, https://dcp.psc.gov/OSG/veterinarian/. Additional information about the emergency response activities of National Disaster Medical System (NDMS) and the U.S. Public Health Service (USPHS)

Inspection Service (APHIS) maintains capacity to respond to animal health emergencies affecting domestic livestock and poultry.[225]

Section 1229: Extension of Assistance[226]

DRRA Section 1229 retroactively extended Disaster Unemployment Assistance (DUA). When the President declares a major disaster, individuals who would typically be ineligible for Unemployment Compensation[227] (UC) may be eligible for DUA.[228] After the disaster declaration, the DUA benefits are available to eligible individuals as long as the major disaster continues, for a period of up to 26 weeks.[229] In some cases, UC beneficiaries who had an entitlement to UC benefits of fewer than 26 weeks *and* who became unemployed as a direct result of a disaster *and* exhausted their weeks of UC entitlement may be entitled to some DUA benefits. No more than a total of 26 weeks of total benefits (UC plus DUA) are allowable in this situation.

The maximum number of available weeks of DUA has been temporarily extended three times, most recently by DRRA.[230] DRRA Section 1229 retroactively extended DUA for an additional 26 weeks for persons who were unemployed in Puerto Rico and the U.S. Virgin Islands as a direct result of the 2017 Hurricane Irma or Hurricane Maria disasters. (This created a total potential entitlement to DUA of up to 52 weeks for some individuals.) Because the disasters had both been declared more than 52 weeks before DRRA's enactment, the remaining DUA weeks will be paid retroactively.[231] Individuals who worked in these areas and exhausted entitlement to UC may be

Commissioned Corps is available in CRS Report R43560, *Deployable Federal Assets Supporting Domestic Disaster Response Operations: Summary and Considerations for Congress*, coordinated by Jared T. Brown.

[225] Animal and Plant Health Inspection Service (APHIS), "Animal Health Emergency Management," last modified February 19, 2019, https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/emergency-management/ct_emergency_management_home.

[226] This section authored by Julie M. Whittaker, Specialist in Income Security, Domestic Social Policy Division, Education and Labor Section.

[227] For a summary of the Unemployment Compensation (UC) program, see CRS Report RL33362, *Unemployment Insurance: Programs and Benefits*, by Julie M. Whittaker and Katelin P. Isaacs.

[228] Authorization for DUA can be found in §410 of the Stafford Act, P.L. 93-288, as amended, 42 U.S.C. §5177. Regulations can be found at 20 C.F.R. Part 625. For a description of the DUA program, see CRS Report RS22022, *Disaster Unemployment Assistance (DUA)*, by Julie M. Whittaker. For information on how unemployment and employment programs respond to disasters, see CRS Report R45182, *Unemployment and Employment Programs Available to Workers Affected by Disasters*, coordinated by Benjamin Collins.

[229] In 1970, P.L. 91-606 required that DUA benefits not exceed the maximum amount and duration of the state's UC benefit. This generally required a duration of not more than 26 weeks. Section 407 of P.L. 93-288 in 1974 amended this requirement to a duration not to exceed one year. P.L. 100-707 lowered the maximum duration to 26 weeks.

[230] The other two extensions were: (1) P.L. 107-154, which temporarily extended the duration of DUA benefits from 26 to 39 weeks for victims of the September 11, 2001, terrorist attacks in the declared major disaster areas in New York and Virginia; and (2) P.L. 109-176, which extended the duration of DUA benefits from 26 to 39 weeks for victims of the Hurricanes Katrina and Rita disasters. These extensions did not apply to any subsequent major disasters.

[231] According to personal communication with CRS on January 31, 2019, the USDOL issued guidance letters regarding P.L. 115-254 directly to Puerto Rico Department of Labor (PRDOL) and U.S. Virgin Islands Department of Labor (VIDOL) on November 5, 2018. Subsequently, the PRDOL issued a press release announcing availability of the DUA extension provided under P.L. 115-254 on January 22, 2019. VIDOL also issued a press release announcing availability on March 26, 2019. The press releases explained retroactive DUA extension potentially eligible individuals, filing requirements, and deadlines. The filing deadlines for the additional DUA benefits have been extended multiple times, most recently until July 24, 2019, for Puerto Rico and July 31, 2019, for U.S. Virgin Islands.

eligible for DUA benefits for any remaining uncompensated weeks, up to 52 weeks total (UC plus DUA).[232]

Section 1226: Inspector General Audit of FEMA Contracts for Tarps and Plastic Sheeting[233]

DRRA Section 1226 requires the DHS IG to audit the contracts that FEMA awarded for tarps and plastic sheeting for the Commonwealth of Puerto Rico and the U.S. Virgin Islands in response to Hurricanes Irma and Maria.[234] Specifically, the DHS IG must review

- FEMA's contracting process for evaluating offerors and awarding contracts for tarps and plastic sheeting;
- FEMA's assessment of contractor past performance;
- FEMA's assessment of the contractors' capacity to carry out the contracts;
- how FEMA ensured contractors met the terms of the contracts; and
- whether the failure of contractors to meet the terms of the contracts, and FEMA's cancellation of the contracts affected the provision of tarps and plastic sheeting.[235]

In addition, the DHS IG must submit a report containing the audit's findings and recommendations to the House Transportation and Infrastructure Committee and Senate HSGAC no later than 270 days after the audit is initiated.

According to the *2017 Hurricane Season FEMA After-Action Report*, during Hurricanes Harvey and Irma response operations, FEMA exhausted its pre-negotiated contracts—including contracts to provide tarps.[236] To meet the need for tarps in response to Hurricane Maria, FEMA awarded new contracts, reportedly awarding contracts to "entities that were assessed as technically acceptable and committed to meeting the requirements, in accordance with the provisions of the Federal Acquisition Regulation."[237] FEMA stated that, overall, it "executed a successful acquisitions process, with the Agency canceling just three contracts."[238] Included in the cancelled

[232] In Puerto Rico and the U.S. Virgin Islands, up to an additional 26 weeks of DUA would be available for DUA and UC exhaustees. Because EB was available in the U.S. Virgin Islands from December 17, 2017, through June 23, 2018, some individuals in the U.S. Virgin Islands may have had up to 26 weeks of UC and an additional 13 weeks of EB. In this case, P.L. 115-254 provided up to an additional 13 weeks of DUA benefits. (EB has not been available in Puerto Rico since 2010.) For details on the EB program, see CRS Report RL33362, *Unemployment Insurance: Programs and Benefits*, by Julie M. Whittaker and Katelin P. Isaacs.

[233] This section authored by Elizabeth M. Webster, Analyst in Emergency Management and Disaster Recovery, Government and Finance Division, Federalism and Emergency Management Section.

[234] §1226 of DRRA, P.L. 115-254.

[235] §1226 of DRRA, P.L. 115-254.

[236] FEMA, *2017 Hurricane Season FEMA After-Acton Report (AAR)*, July 11, 2018, p. 30, https://www.fema.gov/media-library-data/1531743865541-d16794d43d3082544435e1471da07880/2017FEMAHurricaneAAR.pdf.

[237] FEMA, *2017 Hurricane Season AAR*, p. 30.

[238] FEMA, *2017 Hurricane Season AAR*, p. 30. Note that in the DHS IG's report, *FEMA Should Not Have Awarded Two Contracts to Bronze Star LLC*, in FEMA's comments to the draft report, the agency stated that "[d]uring the 2017 Hurricane Season FEMA cancelled just four contracts, actions which did not hinder FEMA's ability to deliver its mission." The DHS IG added that "even though FEMA maintains in its management response that it canceled only four contracts during the 2017 hurricane season, documentation provided by FEMA during our audit revealed that the agency canceled a total of 19 contracts related to Hurricane Maria alone." Office of Inspector General, *FEMA Should Not Have Awarded Two Contracts to Bronze Star LLC*, DHS, OIG-19-38, May 7, 2019, pp. 9 and 14,

contracts were contracts for tarps and plastic sheeting.[239] FEMA went on to state that, "[t]hese cancellations did not hinder FEMA's ability to deliver on its mission."[240] However, FEMA later acknowledged that the issues with the contracts delayed the delivery of plastic tarps to Puerto Rico.[241]

The DHS IG audit requirement included in DRRA may have arisen from congressional concerns regarding FEMA's management of contracts for tarps and plastic sheeting during its 2017 hurricane season response operations. For example, a 2018 report issued by the minority staff of Senate HSGAC concluded that FEMA's acquisition strategy and process, including the use of pre-negotiated, advance contracts during the 2017 hurricane season, was not successful. The Senate HSGAC minority staff report identified several deficiencies in FEMA's contracting process, including that:

- FEMA did not adequately use prepositioned contracts and awarded new contracts before using prepositioned contracts;[242]
- FEMA awarded contracts without adequate vetting, including $73 million for tarps and plastic sheeting to two contractors with no relevant past performance, and these contracts were cancelled due to the companies' failure to deliver;[243] and
- FEMA's bid process did not ensure adequate competition, in part due to limited notice provided to prospective vendors and short timeframes for proposal submission.[244]

According to the Senate HSGAC minority staff report, the two contracts for tarps and plastic sheeting that were cancelled were intended to provide a total of 1.1 million tarps and 60 thousand rolls of plastic sheeting.[245] The report also identified additional issues that delayed the delivery of tarps and plastic sheeting, such as other companies that were awarded contracts for tarps and

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https://www.oig.dhs.gov/sites/default/files/assets/2019-05/OIG-19-38-May19.pdf.

[239] HSGAC, *Government Oversight: Failures in FEMA Contracting for Emergency Tarps & Sheeting During the 2017 Hurricane Season*, Minority Staff Report, 115th Cong., 2nd sess., April 10, 2018, p. 6, https://www.hsgac.senate.gov/imo/media/doc/Government%20Oversight%20-%20Failures%20in%20FEMA%20Contracting%20for%20Emergency%20Tarps%20and%20Sheeting%20During%20the%202017%20Hurricane%20Season.pdf.

[240] FEMA, *2017 Hurricane Season AAR*, p. 30.

[241] Associated Press in Washington, "Puerto Rico: Urgently Needed Tarps Delayed by Failed $30m FEMA Contract," *The Guardian*, November 28, 2017, https://www.theguardian.com/world/2017/nov/28/puerto-rico-urgently-needed-tarps-delayed-by-failed-30m-fema-contract. In addition, the DHS IG, in a recent report, concluded that FEMA should not have awarded two contracts to Bronze Star, LLC, stating "As a result of these management control weaknesses, FEMA inappropriately awarded two contracts to Bronze Star, which did not meet the requirements of either contract. *This deficiency delayed delivery of crucial supplies, and impeded Puerto Rican residents' efforts to protect their homes and prevent further damage.* Overall, FEMA wasted personnel resources, time, and taxpayer money by issuing, canceling, and reissuing contracts for tarps [emphasis added]." DHS IG, *FEMA Should Not Have Awarded*, summary.

[242] HSGAC, *Government Oversight: Failures in FEMA Contracting*, pp. 3-5.

[243] HSGAC, *Government Oversight: Failures in FEMA Contracting*, pp. 5-6.

[244] HSGAC, *Government Oversight: Failures in FEMA Contracting*, pp. 7-8.

[245] HSGAC, *Government Oversight: Failures in FEMA Contracting*, p. 6. FEMA awarded Bronze Star, LLC two contracts: one worth $25.7 million to provide 600,000 plastic tarps, and one worth $13.9 million to provide 60,000 rolls of plastic sheeting; and awarded Global Computers and Networks, LLC one contract worth $33.9 million to provide 500,000 plastic tarps. The contracts with both entities were cancelled by FEMA due to failure to deliver. Note that the DHS IG report, *FEMA Should Not Have Awarded Two Contracts to Bronze Star LLC*, provides different contract values for Bronze Star, LLC, stating one was a "$21.2 million contract for 475,000 tarps" and the other was a "$9.2 million [contract] for 60,000 units of plastic sheeting." DHS IG, *FEMA Should Not Have Awarded*, p. 3.

plastic sheeting struggling to meet delivery timeframes,[246] and other logistical issues, such as FEMA's exhausted inventory of commodities following Hurricanes Harvey and Irma, commodity delivery challenges (e.g., delivery truck and driver shortages), and shortages of contractors to perform repairs.[247] The Chairman of the Senate Budget Committee, Senator Mike Enzi, also questioned how FEMA identified, vetted, and awarded contracts following Hurricane Maria, stating "[i]t appears that FEMA has not properly vetted some of the companies that receive contracts and therefore may have wasted millions of taxpayer dollars, while simultaneously denying services to citizens in need of them."[248]

Following Hurricane Katrina and the passage of the Post-Katrina Emergency Management Reform Act of 2006 (P.L. 109-295), FEMA worked to maximize the use of advance contracts for goods and services;[249] however, in a 2015 report, the GAO found deficiencies with FEMA's contracting guidance.[250] This remains an issue; in the GAO's assessment of FEMA's 2017 advance contracting, it recommended that FEMA, among other things

- update its strategy for advance contracting, including defining objectives and how advance contracts should be prioritized in relation to new post-disaster contract awards;
- update the *Disaster Contracting Desk Guide* to include guidance for using advance contracts prior to making new post-disaster contract awards, and provide semi-annual training to contracting officers on said guidance; and
- update and implement existing guidance to identify acquisition planning timeframes and considerations.[251]

The GAO also stated that "an outdated strategy and lack of guidance to contracting officers resulted in confusion about whether and how to prioritize and use advance contracts to quickly mobilize resources in response to the three 2017 hurricanes.... "[252]

In May 2019, the DHS IG released a report concluding that FEMA should not have awarded two contracts to Bronze Star LLC—one for tarps and one for plastic sheeting. FEMA cancelled both contracts due to nondelivery.[253] The findings of this audit, which are included in the DHS IG's report, *FEMA Should Not Have Awarded Two Contracts to Bronze Star LLC*, and accompanied by recommendations, may contribute to the audit and report requirements included in DRRA Section

[246] HSGAC, *Government Oversight: Failures in FEMA Contracting*, pp. 8-9. The "average delay between the delivery deadline initially specified in FEMA's contract solicitation and the actual delivery date [was] 14 days."

[247] HSGAC, *Government Oversight: Failures in FEMA Contracting*, pp. 9-10; see also Kate McCormick and Emma Schwartz, "After Maria, Thousands on Puerto Rico Waited Months for a Plastic Roof," *Frontline*, May 2, 2018, https://www.pbs.org/wgbh/frontline/article/after-maria-thousands-on-puerto-rico-waited-months-for-a-plastic-roof/.

[248] Senator Mike Enzi, "Enzi Seeks More Information on FEMA Disaster Relief Contracts," press release, February 15, 2018, https://www.enzi.senate.gov/public/index.cfm/news-releases?ID=F675C071-C2AB-4CF6-9351-748AB10B102D; see also Letter from Michael B. Enzi, Chairman, Committee on the Budget, to William B. Long, Administrator, FEMA, February 8, 2018, https://www.budget.senate.gov/imo/media/doc/FEMA%20Hurricane%20Maria%20Contract%20Oversight%20Letter.pdf.

[249] GAO, *Disaster Contracting: FEMA Needs to Cohesively Manage Its Workforce and Fully Address Post-Katrina Reforms*, GAO-15-783, September 2015, p. 28, https://www.gao.gov/assets/680/672771.pdf.

[250] GAO, *Disaster Contracting: Fully Address Post-Katrina Reforms*, pp. 26-27 and 42-43.

[251] GAO, *2017 Disaster Contracting: Action Needed to Better Ensure More Effective Use and Management of Advance Contracts*, GAO-19-93, December 2018, p. 42, https://www.gao.gov/assets/700/695829.pdf.

[252] GAO, *2017 Disaster Contracting: Advance Contracts*, p. 14.

[253] DHS IG, *FEMA Should Not Have Awarded*, p. 3.

1226.[254] Depending on the DHS IG's findings, Congress may require FEMA to update its contracting strategy, as well as its policies and procedures related to prepositioning supplies and quickly ramping up procurement operations (i.e., using advance contracts and executing new contracts for commodities and services). FEMA's acquisition personnel may also benefit from additional guidance and training regarding advance contracting, including how to determine whether potential contractors have the capacity to successfully perform the requirements of the contract.

Concluding Observations

DRRA amends many sections of the Stafford Act, and establishes numerous reporting and rulemaking requirements. The implementation of DRRA includes "more than 50 provisions that require FEMA policy or regulation changes...."[255] Thus, it could be argued that much of DRRA's implementation is at FEMA's discretion. Although FEMA is working on DRRA implementation, it is unclear at this time how FEMA will address many of DRRA's requirements and recommendations.[256]

Congress may oversee the implementation of DRRA through hearings or other inquiries to ensure that the post-DRRA changes to disaster assistance programs and policies fulfill congressional intent and the interests of Congress. Congress may also review the effectiveness and impacts of FEMA's DRRA-related regulations and policy guidance, including assessing the effects of DRRA-related changes to federal assistance for past and future disasters.

[254] The DHS IG's findings included that (1) FEMA did not fully determine Bronze Star LLC or its supplier's compliance with the contracts' terms; (2) FEMA's technical evaluation of proposals was inaccurate; (3) FEMA used incorrect Federal Acquisition Regulation (FAR) clauses in original solicitations; and (4) FEMA did not consult the Disaster Response Registry. DHS IG, *FEMA Should Not Have Awarded*.

[255] For information about each provision in DRRA, including the status of FEMA's implementation, see FEMA, "Disaster Recovery Reform Act of 2018," last updated June 11, 2019, https://www.fema.gov/disaster-recovery-reform-act-2018.

[256] FEMA, "Disaster Recovery Reform Act of 2018."

Appendix A. Tables of Deadlines Associated with the Implementation Actions and Requirements of the Disaster Recovery Reform Act of 2018

In addition to numerous amendments to the Stafford Act, DRRA includes standalone authorities. DRRA requires reports to Congress, rulemaking/regulatory actions, and other actions to support disaster preparedness, and increase transparency and accountability with regard to FEMA. The following three tables of deadlines are associated with DRRA's reporting, rulemaking/regulatory, and other implementation actions and requirements: **Table A-1**. DRRA Reporting Requirements (i.e., reports to Congress); **Table A-2**. DRRA Rulemaking and Regulations Requirements; and **Table A-3**. DRRA Guidance and Other Required Actions.

The tables are organized by deadline for implementation in chronological order, and include: the relevant DRRA Section; referenced Stafford Act Section(s), if applicable; a brief description of the requirement; the entity responsible for accomplishing the requirement; the recipient of the information/action; the due date described in DRRA; and the deadline expressed as a calendar date. Some sections of DRRA include multiple implementation actions and requirements and, as such, are included in multiple tables and may appear multiple times. Additionally, some sections of DRRA do not specify the date by which the implementation action or requirement must be completed. For these sections, the due date and calendar deadline are listed as "N/A." Some sections of DRRA include requirements for ongoing actions (e.g., monthly reporting requirements). For these sections, the deadline is listed as "ongoing." Acronyms used in the tables are defined in the associated notes sections.

Note that information included in the three tables of deadlines associated with DRRA implementation may be subject to change, and the following tables may not be up-to-date following the publication of this report.

Table A-1. Disaster Recovery Reform Act (DRRA) Reporting Requirements

Reporting to Congress

DRRA Section	Stafford Act Section(s)	Requirement(s)	Responsible Entity	Recipient	Due Date	Deadline
Section 1224. Agency Accountability	Section 430(d)(2)—Agency Accountability	**Report** on contract information for the preceding fiscal year, including number of contracts awarded without competitive bidding, justification, and total amount of contracts awarded without competitive bidding, as well as damage category codes, if applicable. See DRRA Section 1224 for specific report content requirements.	FEMA Admin.	Appropriate Committees of Congress	Not later than 10 days after the last day of the fiscal year	Ongoing
Section 1245. Review of Assistance for Damaged Underground Water Infrastructure	Sections 403—Essential Assistance, 406—Repair, Restoration, and Replacement of Damaged Facilities, 407—Debris Removal, 428—Public Assistance Program Alternative Procedures, and 502(a)—Federal Emergency Assistance	**Review and Briefing** on the assessment and eligibility process under the Public Assistance grant program with respect to assistance provided for damaged underground water infrastructure as a result of a major disaster, including wildfires. The review must include the extent to which local technical memoranda identified damaged underground water infrastructure that should be eligible for Public Assistance.	FEMA Admin.	HSGAC; Transportation and Infrastructure	Not later than 60 days after the date of enactment of this act	Dec. 4, 2018[a]

DRRA Section	Stafford Act Section(s)	Requirement(s)	Responsible Entity	Recipient	Due Date	Deadline
Section 1220. Unified Federal Environmental and Historic Preservation Review	Section 429—Unified Federal Review	**Report** on the Unified Federal Environmental and Historic Preservation review process established pursuant to Stafford Act Section 429—Unified Federal Review, and report on an analysis of whether and how the unified process has expedited the interagency review process to ensure compliance related to disaster recovery projects; conduct a survey and analysis of categorical exclusions used by other federal agencies that may be applicable to any activity related to a major disaster or emergency; and provide recommendations on further actions, including legislative proposals, to expedite and streamline the review process.	FEMA Admin.	HSGAC; Transportation and Infrastructure	Not later than 180 days after the date of enactment of this act	Apr. 3, 2019
Section 1243. FEMA Report on Duplication in Non-natural Disaster Preparedness Grant Programs	N/A	**Report** on the results of the efforts of FEMA to identify and prevent unnecessary duplication within and across the non-natural disaster preparedness grant programs as recommended in the GAO report entitled, "2012 Annual Report: Opportunities to Reduce Duplication, Overlap and Fragmentation, Achieve Savings, and Enhance Revenue" (February 28, 2012), including with respect to the Urban Area Security Initiative (UASI), Port Security Grant Program, State Homeland Security Grant Program (SHSGP), and the Transit Security Grant Program.	FEMA Admin.	HSGAC; Transportation and Infrastructure; House Homeland	Not later than 180 days after the date of enactment of this act	Apr. 3, 2019

DRRA Section	Stafford Act Section(s)	Requirement(s)	Responsible Entity	Recipient	Due Date	Deadline
Section 1245. Review of Assistance for Damaged Underground Water Infrastructure	Sections 403—Essential Assistance, 406—Repair, Restoration, and Replacement of Damaged Facilities, 407—Debris Removal, 428—Public Assistance Program Alternative Procedures, and 502(a)—Federal Emergency Assistance	**Report** on the review conducted on the assessment and eligibility process under the Public Assistance grant program with respect to assistance provided for damaged underground water infrastructure as a result of a major disaster, including wildfires, to include the extent to which local technical memoranda identified damaged underground water infrastructure that should be eligible for Public Assistance.	FEMA Admin.	HSGAC; Transportation and Infrastructure	Not later than 180 days after the date of enactment of this act	Apr. 3, 2019[b]
Section 1242. FEMA Updates on National Preparedness Assessment	N/A	**Update Report** on FEMA's progress in completing action 6 with respect to the GAO report entitled, "2012 Annual Report: Opportunities to Reduce Duplication, Overlap and Fragmentation, Achieve Savings, and Enhance Revenue" (February 28, 2012), which recommends FEMA complete a national preparedness assessment of capability gaps at each level based on tiered, capability-specific performance objectives to enable prioritization of grant funding; and identify the potential costs for establishing and maintaining those capabilities at each level and determine what capabilities federal agencies should provide.	FEMA Admin.	HSGAC; Transportation and Infrastructure; House Homeland	Not later than 6 months after the date of enactment of this Act; every 6 months thereafter until completion	Apr. 5, 2019; every 6 months thereafter until completion[c]
Section 1239. Cost of Assistance Estimates	N/A	**Report and Briefing** on a review of the factors considered when evaluating a request for a major disaster declaration, specifically the estimated cost of the assistance.	FEMA Admin.	HSGAC; Transportation and Infrastructure	Not later than 270 days after the date of enactment of this act	July 2, 2019

DRRA Section	Stafford Act Section(s)	Requirement(s)	Responsible Entity	Recipient	Due Date	Deadline
Section 1226. Inspector General Audit of FEMA Contracts for Tarps and Plastic Sheeting	N/A	**Report** on the results of the audit, including findings and recommendations, regarding the contracts awarded by FEMA for tarps and plastic sheeting for the Commonwealth of Puerto Rico and the U.S. Virgin Islands in response to Hurricanes Irma and Maria to review the contracting process used to evaluate offerors and award contracts; past performance assessment; capacity to carry out relevant contracts assessment; how FEMA ensured the contractors met the terms; and whether the failure to meet the terms and subsequent cancellation affected the provision of tarps and plastic sheeting.	DHS IG	HSGAC; Transportation and Infrastructure	Not later than 270 days after the date of initiation of the audit (due not later than Nov. 4, 2018)	Aug. 1, 2019
Section 1211. State Administration of Assistance for Direct Temporary Housing and Permanent Housing Construction	Section 408(f)—Federal Assistance to Individuals and Households	**Report** on a potential incentive structure for awards made under this section to encourage participation by eligible state or tribal governments, including potential adjustments to the cost-share requirement, and management costs.	FEMA Admin. with input from state, local, and tribal entities	HSGAC; Transportation and Infrastructure	Not later than 12 months after the date of enactment of this paragraph	Oct. 5, 2019

DRRA Section	Stafford Act Section(s)	Requirement(s)	Responsible Entity	Recipient	Due Date	Deadline
Section 1224. Agency Accountability	Section 430(e)(3)—Agency Accountability—as amended	**Report** on efforts to collect and store information, prior to the project closeout phase on any contract entered into by a Public Assistance recipient/subrecipient that has an estimated value of more than $1M and is funded through Stafford Act Sections 324—Management Costs, 403—Essential Assistance, 404—Hazard Mitigation, 406—Repair, Restoration, and Replacement of Damaged Facilities, 407—Debris Removal, 428—Public Assistance Program Alternative Procedures, or 502—Federal Emergency Assistance. See DRRA Section 1224 for specific requirements.	FEMA Admin.	HSGAC; Transportation and Infrastructure	Not later than 365 days after the date of enactment of this subsection	Oct. 5, 2019
Section 1232. Local Impact	N/A	**Report** on changes made to regulations and policies to give greater consideration to severe local impact or recent multiple disasters in making recommendations to the President regarding a major disaster declaration; and the number of declarations that have been declared based on the new criteria.	FEMA Admin.	HSGAC; Transportation and Infrastructure	Not later than 1 year after the date of enactment of this section	Oct. 5, 2019
Section 1238. Federal Assistance to Individuals and Households and Nonprofit Facilities	Section 408(e)(1)—Federal Assistance to Individuals and Families	**Report** on the costs associated with providing critical document fee waivers.	FEMA Admin. and head of any agency given authority	HSGAC; Transportation and Infrastructure	Not later than 365 days after the date of enactment of this subsection	Oct. 5, 2019

DRRA Section	Stafford Act Section(s)	Requirement(s)	Responsible Entity	Recipient	Due Date	Deadline
Section 1204. Wildfire Prevention	Section 420—Fire Management Assistance	**Report** on a summary of any projects carried out, and any funding provided to those projects, under Stafford Act Section 420(d)—Fire Management Assistance—as amended.	FEMA Admin.	HSGAC; Transportation and Infrastructure; Senate Appropriations; House Appropriations	Not later than 1 year after the date of enactment of this act; annually thereafter	Oct. 5, 2019; annually thereafter
Section 1210. Duplication of Benefits	Section 312(b)—Duplication of Benefits	**Report** on information to improve the comprehensive delivery of disaster assistance to individuals following a major disaster or emergency declaration under the Stafford Act, to include administrative actions taken/planned and legislative proposals. See DRRA Section 1210(a)(5) for specific report content requirements.	FEMA Admin. with relevant federal agencies	Committees of Jurisdiction	Not later than 1 year after the date of enactment of this act; an update not later than 4 years after the enactment of this subsection	Oct. 5, 2019; Oct. 5, 2022
Section 1246. Extension	N/A	**Report** on the status of implementing reasonable and prudent alternatives outlined in the jeopardy biological opinion dated April 14, 2016.	FEMA Admin.	HSGAC; Banking, Housing, and Urban Affairs; Environment and Public Works; Transportation and Infrastructure; House Homeland; Natural Resources	Within 18 months from the date of enactment of this act	Apr. 5, 2020

DRRA Section	Stafford Act Section(s)	Requirement(s)	Responsible Entity	Recipient	Due Date	Deadline
Section 1211. State Administration of Assistance for Direct Temporary Housing and Permanent Housing Construction	Section 408(f)—Federal Assistance to Individuals and Households	**Report** on an assessment of the effectiveness of the state or tribal government's role in providing assistance, including whether it helped improve the general speed of recovery; whether the state or tribal government had the capacity to administer the assistance; and recommendations for changes to improve the program.	DHS IG	HSGAC; Transportation and Infrastructure	Not later than 18 months after the date of enactment of this paragraph	Apr. 5, 2020
Section 1213. Multifamily Lease and Repair Assistance	Section 408(c)(1)(B)(ii)—Federal Assistance to Individuals and Households	**Report** on the use of the authority provided under Stafford Act Section 408(c)(1)(B)—Federal Assistance to Individuals and Households—as amended, including the adequacy of any benefit-cost analysis done to justify the use of this alternative to other temporary housing options.	DHS IG	Appropriate Committees of Congress	Not later than 2 years after the date of enactment of this act	Oct. 5, 2020
Section 1235. Additional Mitigation Activities	Section 406(e)—Repair, Restoration, and Replacement of Damaged Facilities	**Report** on the regulations and guidance issued related to defining the terms "resilient" and "resiliency" for purposes of Stafford Act Section 406(e)—Repair, Restoration, and Replacement of Damaged Facilities.	FEMA Admin.	Congress	Not later than 2 years after the date of enactment of this paragraph	Oct. 5, 2020
Section 1240. Report on Insurance Shortfalls	N/A	**Report** on the number of instances and the estimated amounts involved, by state, for cases in which self-insurance amounts have been insufficient to address flood damages.	FEMA Admin.	Congress	Not later than 2 years after the date of enactment of this section, and each year thereafter until 2023	Oct. 5, 2020; annually thereafter until 2023

Source: Disaster Recovery Reform Act (DRRA), Division D of P.L. 115-254, https://www.congress.gov/115/bills/hr302/BILLS-115hr302enr.pdf.

Notes: Committees of the Senate and House of Representatives are referred to herein as follows: the Committee on Homeland Security and Governmental Affairs of the Senate is referred to herein as "HSGAC"; the Committee on Transportation and Infrastructure of the House of Representatives is referred to herein as "Transportation and Infrastructure"; the Committee on Homeland Security of the House of Representatives is referred to herein as "House Homeland"; the Committee on Appropriations of the Senate is referred to herein as "Senate Appropriations"; the Committee on Appropriations of the House of Representatives is referred to herein as "House Appropriations"; the Committee on Banking, Housing, and Urban Affairs of the Senate is referred to herein as "Banking, Housing, and Urban Affairs"; the Committee on Environment and Public Works of the Senate is referred to herein as "Environment and Public Works"; and the Committee on Natural Resources of the House of Representatives is referred to herein as "Natural Resources." **Federal agencies/departments and representatives are referred to herein as follows:** the FEMA Administrator is referred to herein as "FEMA Admin."; and the Inspector General of the Department of Homeland Security is referred to herein as "DHS IG." N/A = not applicable; no deadline is specified in DRRA.

a. In a hearing before Transportation and Infrastructure, Dr. Daniel Kaniewski, FEMA Deputy Administrator for Resilience, noted a report target release date of October 2019 and stated that the briefing would be forthcoming as of the hearing date (U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management, *Disaster Preparedness: DRRA Implementation and FEMA Readiness*, 116th Cong., 1st sess., May 22, 2019, https://transportation.house.gov/committee-activity/hearings/the-subcommittee-on-economic-development-public-buildings-and-emergency-management-hearing-on_—disaster-preparedness-drra-implementation-and-fema-readiness).

b. In a hearing before Transportation and Infrastructure, Dr. Daniel Kaniewski, FEMA Deputy Administrator for Resilience, noted a report target release date of October 2019 and stated that the briefing would be forthcoming as of the hearing date (Transportation and Infrastructure, *Disaster Preparedness: DRRA*).

c. FEMA's website that tracks its implementation of DRRA has included an implementation update for Section 1242, which states that "[p]rogress updates to Congress began on May 16, 2019" (FEMA, "Disaster Recovery Reform Act of 2018," last updated June 11, 2019, https://www.fema.gov/disaster-recovery-reform-act-2018).

Table A-2. Disaster Recovery Reform Act (DRRA) Rulemaking and Regulations Requirements

FEMA Regulations and Policies

DRRA Section	Stafford Act Section(s)	Requirement(s)	Responsible Entity	Due Date	Deadline
Section 1232. Local Impact	N/A	**Regulations and Policies** that make changes to give greater consideration to severe local impact or recent multiple disasters in making recommendations to the President regarding a major disaster declaration.	FEMA Admin.	N/A	N/A
Section 1245. Review of Assistance for Damaged Underground Water Infrastructure	Sections 403—Essential Assistance, 406—Repair, Restoration, and Replacement of Damaged Facilities, 407—Debris Removal, 428—Public Assistance Program Alternative Procedures, and 502(a)—Federal Emergency Assistance	**Rulemaking** initiated, if appropriate, to address any recommendations contained in the report on the assessment and eligibility process under the Public Assistance grant program with respect to assistance provided for damaged underground water infrastructure as a result of a major disaster, including wildfires, to include the extent to which local technical memoranda identified damaged underground water infrastructure that should be eligible for Public Assistance.	FEMA Admin.	Not later than 180 days after the date on which the FEMA Admin. issues the report (due not later than Apr. 3, 2019)	Sept. 30, 2019
Section 1235. Additional Mitigation Activities	Section 406(e)—Repair, Restoration, and Replacement of Damaged Facilities	**Rulemaking** to define the terms "resilient" and "resiliency" for purposes of Stafford Act Section 406(e)—Repair, Restoration, and Replacement of Damaged Facilities.	POTUS through the FEMA Admin. with relevant federal agencies	Not later than 18 months after the date of enactment of this paragraph	Apr. 5, 2020
Section 1211. State Administration of Assistance for Direct Temporary Housing and Permanent Housing Construction	Section 408(f)—Federal Assistance to Individuals and Households	**Regulations** to implement amendments to Stafford Act Section 408(f)—Federal Assistance to Individuals and Households. Note that this may be carried out as a pilot program until regulations are promulgated (authority expires 2 years after the date of enactment of this paragraph or upon issuance of final regulations, whichever is sooner).	FEMA Admin.	Not later than 2 years after the date of enactment of this paragraph	Oct. 5, 2020

DRRA Section	Stafford Act Section(s)	Requirement(s)	Responsible Entity	Due Date	Deadline
Section 1220. Unified Federal Environmental and Historic Preservation Review	Section 429—Unified Federal Review	**Regulations** to implement any regulatory recommendations, including categorical exclusions, after completing the review, survey, and analyses of the Unified Federal Environmental and Historic Preservation review process established pursuant to Stafford Act Section 429—Unified Federal Review.	FEMA Admin.	No later than 2 years after the date of enactment of this act (and after providing notice and opportunity for public comment)	Oct. 5, 2020
Section 1239. Cost of Assistance Estimates	N/A	**Rulemaking** initiated to update the factors considered when evaluating a governor's request for a major disaster declaration, including how FEMA estimates the cost of major disaster assistance, and to consider other impacts on the capacity of a jurisdiction to respond to disasters in consultation with relevant state, regional, local, and tribal government stakeholders.	FEMA Admin.	Not later than 2 years after the date of enactment of this act	Oct. 5, 2020

Source: Disaster Recovery Reform Act (DRRA), Division D of P.L. 115-254, https://www.congress.gov/115/bills/hr302/BILLS-115hr302enr.pdf.

Notes: Federal agencies/departments and representatives are referred to herein as follows: the FEMA Administrator is referred to herein as "FEMA Admin."; and the President of the United States is referred to herein as "POTUS." N/A = not applicable; no deadline is specified in DRRA.

Table A-3. Disaster Recovery Reform Act (DRRA) Guidance and Other Required Actions

DRRA Section	Stafford Act Section(s)	Requirement(s)	Responsible Entity	Recipient	Due Date	Deadline
Section 1209. Guidance on Evacuation Routes	N/A	**Guidance** on the identification of evacuation routes; and on the design, construction, maintenance, and repair of evacuation routes. See DRRA Section 1209(b) for specific considerations.	FEMA Admin. with FHWA Admin.	state, local, and tribal governments	N/A	N/A[a]
Section 1209. Guidance on Evacuation Routes	N/A	**Study (optional)** on the adequacy of available evacuation routes to accommodate the flow of evacuees may be conducted by FEMA, with FHWA and state, local, territorial, and tribal governments, and recommendations may be submitted on how to help with anticipated evacuation route flow to FEMA; FHWA; state, local, territorial, and tribal governments; and Congress.	FEMA Admin. with FHWA Admin.	FEMA; FHWA; state, local, and tribal governments; Congress	N/A	N/A
Section 1228. Guidance on Inundated and Submerged Roads	Section 430—Agency Accountability, as amended	**Guidance** on repair, restoration, and replacement of inundated and submerged roads damaged or destroyed by a major disaster, and associated expenses incurred that are eligible for assistance under Stafford Act Section 406—Repair, Restoration, and Replacement of Damaged Facilities.	FEMA Admin. with FHWA Admin.	state, local, and tribal governments	N/A	N/A
Section 1230. Guidance and Recommendations	N/A	**Guidance** on actions a common interest community may take in order to be eligible to receive reimbursement from a grantee that receives funds from FEMA for certain activities performed after an event that results in a major disaster.	FEMA Admin.	common interest community that provides essential services of a governmental nature	N/A	N/A

DRRA Section	Stafford Act Section(s)	Requirement(s)	Responsible Entity	Recipient	Due Date	Deadline
Section 1241. Post Disaster Building Safety Assessment	N/A	**Guidance** on the National Incident Management System (NIMS) Resource Management component may be revised or issued, as required, to ensure the functions of post-disaster building safety assessment are accurately resource typed.	FEMA Admin.	federal, state, and local government	N/A	N/A
Section 1216. Flexibility	Sections 408—Federal Assistance to Individuals and Households, 705—Disaster Grant Closeout Procedures	**Monitor and Publish Determination** on the distribution of covered assistance to individuals and households to determine the percentage of such assistance distributed based on an error; if distribution based on an error exceeds 4% of the total amount of covered assistance distributed, DHS IG shall notify FEMA Admin. and publish the determination in the *Federal Register*, and FEMA's authority to waive debts under DRRA Section 1216(a)(2) shall no longer be effective.	DHS IG	FEMA Admin.; *Federal Register*	Monitoring with respect to any 12-month period	Ongoing
Section 1224. Agency Accountability	Section 430(a)—Agency Accountability, as amended	**Publish to Website** specifics of Public Assistance grant awards under Stafford Act Section 406—Repair, Restoration, and Replacement of Damaged Facilities—that are in excess of $1 million. See DRRA Section 1224 for specific requirements.	FEMA Admin.	FEMA website[b]	Not later than 5 days after grant is made	Ongoing

DRRA Section	Stafford Act Section(s)	Requirement(s)	Responsible Entity	Recipient	Due Date	Deadline
Section 1224. Agency Accountability	Section 430(b)—Agency Accountability, as amended	**Publish to Website** specifics of mission assignment or mission assignment task order to another federal department or agency in excess of $1 million, and update any changes to the total cost estimate and the amount obligated. See DRRA Section 1224 for specific requirements.	FEMA Admin.	FEMA website[c]	Not later than 5 days after issuance of a mission assignment/ mission assignment task order; update not later than 10 days after the last day of each month until mission completed and closed out	Ongoing
Section 1224. Agency Accountability	Section 430(c)—Agency Accountability, as amended	**Report** on the methodology and data sources used in developing disaster relief monthly reports. See DRRA Section 1224 for specific report content requirements.	FEMA Admin.	FEMA website	Not later than 10 days after the first day of each month	Ongoing
Section 1224. Agency Accountability	Section 430(d)—Agency Accountability, as amended	**Publish to Website** specifics of contracts entered into in excess of $1 million. See DRRA Section 1224 for specific requirements.	FEMA Admin.	FEMA website	Not later than 10 days after the first day of each month	Ongoing

DRRA Section	Stafford Act Section(s)	Requirement(s)	Responsible Entity	Recipient	Due Date	Deadline
Section 1226. Inspector General Audit of FEMA Contracts for Tarps and Plastic Sheeting	N/A	**Audit** the contracts awarded by FEMA for tarps and plastic sheeting for the Commonwealth of Puerto Rico and the U.S. Virgin Islands in response to Hurricanes Irma and Maria to review the contracting process used to evaluate offerors and award contracts; assessment of past performance; assessment of capacity to carry out relevant contracts; how FEMA ensured the contractors met the terms; and whether the failure to meet the terms and subsequent cancellation affected the provision of tarps and plastic sheeting. See DRRA Section 1226(b) for specific considerations.	DHS IG	N/A	Not later than 30 days after the date of enactment of this act	Nov. 4, 2018
Section 1235. Additional Mitigation Activities	Section 406(e)—Repair, Restoration, and Replacement of Damaged Facilities	**Interim Guidance** to implement Stafford Act Section 406(e)—Repair, Restoration, and Replacement of Damaged Facilities (to expire 18 months after the date of enactment of this paragraph or upon issuance of final regulations, whichever occurs first).	FEMA Admin.	federal, state, and local government	Not later than 60 days after the date of enactment of this paragraph	Dec. 4, 2018
Section 1230. Guidance and Recommendations	N/A	**Legislative Proposal** on how to provide eligibility for disaster assistance with respect to common areas of condominiums and housing cooperatives.	FEMA Admin.	HSGAC; Transportation and Infrastructure	Not later than 90 days after the date of enactment of this act	Jan. 3, 2019

DRRA Section	Stafford Act Section(s)	Requirement(s)	Responsible Entity	Recipient	Due Date	Deadline
Section 1244. Study and Report	N/A	**Contract for a Study** on matters concerning best practices in mortality counts as a result of a major disaster, including addressing approaches to quantifying mortality and significant morbidity among populations affected by major disasters, which shall include best practices and policy recommendations for equitable and timely attribution to facilitate access to available benefits; timely prospective tracing of population levels of mortality and significant morbidity and their causes; and a retrospective study of disaster-related mortality and significant morbidity to inform after-action analysis and improve preparedness efforts (FEMA to contract with the National Academy of Medicine). See DRRA Section 1244(b) for specific content requirements.	FEMA Admin.	National Academy of Medicine	Not later than 90 days after the date of enactment of this act	Jan. 3, 2019[d]
Section 1208. Prioritization of Facilities	N/A	**Guidance and Training** on the need to prioritize assistance to hospitals, nursing homes, and other long-term care facilities; how to prepare for power outages; and how state, local, and tribal governments, first responders, utility companies, hospitals, nursing homes, and other long-term care facilities should develop a strategy to coordinate emergency response plans.	FEMA Admin.	state, local, and tribal governments; first responders; utility companies	Not later than 180 days after the date of enactment of this act	April 3, 2019

DRRA Section	Stafford Act Section(s)	Requirement(s)	Responsible Entity	Recipient	Due Date	Deadline
Section 1224. Agency Accountability	Section 430(e)—Agency Accountability—as amended	**Maintain Information** by collecting and storing information prior to the project closeout phase on any contract entered into by a Public Assistance recipient/subrecipient that has an estimated value of more than $1 million and is funded through Stafford Act Sections 324—Management Costs, 403—Essential Assistance, 404—Hazard Mitigation, 406—Repair, Restoration, and Replacement of Damaged Facilities, 407—Debris Removal, 428—Public Assistance Program Alternative Procedures, or 502—Federal Emergency Assistance. See DRRA Section 1224 for specific requirements.	FEMA Admin.	DHS IG; GAO; Appropriate Committees of Congress	Not later than 180 days after the date of enactment of this subsection	Apr. 3, 2019
Section 1231. Guidance on Hazard Mitigation Assistance	Section 404—Hazard Mitigation	**Guidance** on the acquisition of property for open space as a mitigation measure under Stafford Act Section 404—Hazard Mitigation. See DRRA Section 1231(a)(1) for specific requirements.	FEMA Admin.	state, local, and tribal governments	Not later than 180 days after the date of enactment of this act	Apr. 3, 2019
Section 1236. Guidance and Training by FEMA on Coordination of Emergency Response Plans	N/A	**Guidance and Training** for state, local, and tribal governments, first responders, and facilities that store hazardous materials on coordination of emergency response plans, including providing a list of equipment required in the event a hazardous substance is released into the environment; health risks; and best practices for mitigating further dangers to communities from hazardous substances.	FEMA Admin. with other relevant agencies	state, local, and tribal governments; first responders; facilities that store hazardous materials	Not later than 180 days after the date of enactment of this act; annually thereafter	Apr. 3, 2019; annually thereafter

DRRA Section	Stafford Act Section(s)	Requirement(s)	Responsible Entity	Recipient	Due Date	Deadline
Section 1223. Study to Streamline and Consolidate Information Collection	N/A	**Study and Plan** to modify, streamline, expedite, and simplify the collection of information from disaster assistance applicants and grantees; develop a plan for the regular collection and reporting of information on federal disaster assistance awarded.	FEMA Admin. with SBA, HUD, WG of IGs, and other appropriate agencies	HSGAC; Transportation and Infrastructure	Not later than 1 year after the date of enactment of this act	Oct. 5, 2019
Section 1241. Post Disaster Building Safety Assessment	N/A	**Publish Guidance** for post-disaster assessment of buildings by licensed architects and engineers to ensure the design professionals properly analyze the structural integrity and livability of buildings and structures.	FEMA Admin. with state and local governments; organizations representing design professionals	state and local governments; organizations representing design professionals	Not later than 1 year after the date of enactment of this act	Oct. 5, 2019
Section 1235. Additional Mitigation Activities	Section 406(e)—Repair, Restoration, and Replacement of Damaged Facilities	**Guidance** on the rulemaking that defines the terms "resilient" and "resiliency" for purposes of Stafford Act Section 406(e)—Repair, Restoration, and Replacement of Damaged Facilities.	FEMA Admin.		Not later than 90 days after the date on which the FEMA Admin. issues the final rulemaking (due not later than Apr. 5, 2020) under this paragraph	July 4, 2020

DRRA Section	Stafford Act Section(s)	Requirement(s)	Responsible Entity	Recipient	Due Date	Deadline
Section 1244. Study and Report	N/A	**Report** on matters concerning best practices in mortality counts as a result of a major disaster based on the study conducted.	National Academy of Medicine	FEMA Admin.	Not later than 2 years after the date on which the contract with the National Academy of Medicine is entered into (FEMA contracted to conduct the study in December 2018[e])	Dec. 2020
Section 1246. Extension	N/A	**Deadline Extension** to implement the reasonable and prudent alternatives outlined in the jeopardy biological opinion dated April 14, 2016, by up to 3 years from the date of enactment of this act.	FEMA Admin.	N/A	3 years from the date of enactment of this act Note that FEMA extended the deadline by 3 years on February 6, 2019[f]	Based on the requirement outlined in DRRA: Oct. 5, 2021

Source: Disaster Recovery Reform Act (DRRA), Division D of P.L. 115-254, https://www.congress.gov/115/bills/hr302/BILLS-115hr302enr.pdf.

Notes: Federal agencies/departments and representatives are referred to herein as follows: the FEMA Administrator is referred to herein as "FEMA Admin."; the Administrator of the Federal Highway Administration is referred to herein as "FHWA Admin."; the Inspector General of the Department of Homeland Security is referred to herein as "DHS IG"; the Small Business Administration is referred to herein as "SBA"; the Department of Housing and Urban Development is referred to herein as "HUD"; the Disaster Assistance Working Group of the Council of the Inspectors General on Integrity and Efficiency is referred to herein as "WG of IGs"; the Government Accountability Office is referred to herein as "GAO"; the Committee on Homeland Security and Governmental Affairs of the Senate is referred to herein as "HSGAC"; and the Committee on Transportation and Infrastructure of the House of Representatives is referred to herein as "Transportation and Infrastructure." N/A = not applicable; no deadline is specified in DRRA.

a. In a hearing before Transportation and Infrastructure, Dr. Daniel Kaniewski, FEMA Deputy Administrator for Resilience, noted a July 2019 target date for releasing evacuation route guidance (although DRRA did not include a deadline) (U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management, *Disaster Preparedness: DRRA Implementation and FEMA Readiness*, 116th Cong., 1st sess., May 22, 2019, https://transportation.house.gov/committee-activity/hearings/the-subcommittee-on-economic-development-public-buildings-and-emergency-management-hearing-on_—disaster-preparedness-drra-implementation-and-fema-readiness).

b. FEMA's website that tracks its implementation of DRRA has included an implementation update for Section 1224, which states that data on Public Assistance Grants is available on OpenFEMA (i.e., FEMA, "OpenFEMA," last updated October 15, 2018, https://www.fema.gov/openfema) (FEMA, "Disaster Recovery Reform Act of 2018," last updated June 11, 2019, https://www.fema.gov/disaster-recovery-reform-act-2018).

c. FEMA's DRRA implementation website has included an implementation update for Section 1224, which states that data on FEMA Mission Assignments is available on OpenFEMA (i.e., FEMA, "OpenFEMA") (FEMA, "Disaster Recovery Reform Act of 2018").

d. FEMA's DRRA implementation website has included an implementation update for Section 1244, which states that "FEMA contracted with the National Academy of Medicine in December 2018 to conduct the required study" (FEMA, "Disaster Recovery Reform Act of 2018").

e. FEMA's DRRA implementation website has included an implementation update for Section 1244, which states that "FEMA contracted with the National Academy of Medicine in December 2018 to conduct the required study" (FEMA, "Disaster Recovery Reform Act of 2018").

f. FEMA's DRRA implementation website has included an implementation update for Section 1246, which states that "FEMA extended the implementation deadline by three years on February 6, 2019" (FEMA, "Disaster Recovery Reform Act of 2018"). It is unclear whether the three year extension relates to the original deadline of three years from the date of DRRA's enactment, or if the new deadline is three years from the extension date of February 6, 2019.

Appendix B. Acronym Table

The following acronyms for entities, programs, and legislation are used throughout this report:

Table B-1. Acronym Table

Acronym	Name of Entity or Legislation
APHIS	Animal and Plant Health Inspection Service
CBO	Congressional Budget Office
CDBG-DR	Community Development Block Grant—Disaster Recovery
DHS	U.S. Department of Homeland Security
DRF	Disaster Relief Fund
DRRA	Disaster Recovery Reform Act of 2018
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FMAG	Fire Management Assistance Grant
GAO	Government Accountability Office
HHS	U.S. Department of Health and Human Services
HMGP	Hazard Mitigation Grant Program
HSGAC	Senate Committee on Homeland Security and Governmental Affairs
HUD	U.S. Department of Housing and Urban Development
IA	Individual Assistance
IAPPG	*Individual Assistance Program and Policy Guide*
IG	Inspector General
IHP	Individuals and Households Program
NDMS	National Disaster Medical System
NFIP	National Flood Insurance Program
NPIPDM	National Public Infrastructure Pre-Disaster Mitigation Fund
ONA	Other Needs Assistance
PA	Public Assistance
PDM	Pre-Disaster Mitigation
PKEMRA	Post-Katrina Emergency Management Reform Act of 2006
SBA	Small Business Administration
SRIA	Sandy Recovery Improvement Act of 2013
USDA	U.S. Department of Agriculture
USGS	U.S. Geological Survey
USPHS	U.S. Public Health Service

Notes: This table does not include an exhaustive list of the acronyms included in this report.

Appendix C. Brief Legislative History

DRRA includes provisions taken from numerous bills aimed at reforming aspects of FEMA. Some of these bills and the provisions incorporated into DRRA include:

- Disaster Recovery Reform Act (H.R. 4460, introduced) included many provisions duplicated or incorporated into DRRA with modifications;
- Disaster Recovery Reform Act of 2018 (S. 3041, introduced) included many provisions duplicated or incorporated into DRRA with modifications;
- Disaster Assistance Fairness and Accountability Act of 2017 (H.R. 3176, introduced) included the provision prohibiting the recoupment of certain assistance (incorporated into DRRA as Section 1216(b)—Flexibility);
- To amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act concerning the statute of limitations for actions to recover disaster or emergency assistance payments, and for other purposes (H.R. 1678, passed House) amended the Stafford Act such that no administrative action to recover payments may be initiated after the date that is three years after the date of transmission of the final expenditure report for project completion as certified by the grantee (incorporated into DRRA as Section 1216(c)—Flexibility);
- Disaster Assistance Support for Communities and Homeowners Act of 2017 (H.R. 1684, passed House) included the provision requiring FEMA to provide technical assistance to a common interest community that provides essential services of a governmental nature on actions they may take to be eligible for reimbursement (incorporated into DRRA as Section 1230—Guidance and Recommendations);
- Community Empowerment for Mitigated Properties Act of 2017 (H.R. 1735, introduced) included a provision for the acquisition of property for open space as a mitigation measure (incorporated into DRRA as Section 1231—Guidance on Hazard Mitigation Assistance);
- Disaster Declaration Improvement Act (H.R. 1665, passed House) included the provision that the FEMA Administrator shall give greater weight and consideration to severe local impact or recent multiple disasters when recommending a major disaster declaration (incorporated into DRRA as Section 1232—Local Impact);
- Pacific Northwest Earthquake Preparedness Act of 2017 (H.R. 654, passed House) included a provision on the use of mitigation assistance to reduce the risk and impacts of earthquake hazards (incorporated into DRRA as Section 1233—Additional Hazard Mitigation Activities);
- Supporting Mitigation Activities and Resiliency Targets for Rebuilding Act, or SMART Rebuilding Act (H.R. 4455, introduced) included a provision on the National Public Infrastructure Pre-Disaster Hazard Mitigation Fund; however, it differed from DRRA Section 1234—National Public Infrastructure Pre-Disaster Hazard Mitigation in that the SMART Rebuilding Act established the fund as a separate account, but DRRA allows for a set-aside from the Disaster Relief Fund. It also includes a provision allowing the President to contribute up to 75% of the cost of hazard mitigation measures determined to be cost effective and which substantially reduce risk or increase resilience (incorporated into DRRA as Section 1235—Additional Mitigation Activities).

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