



November 2018

# **NACo LEGISLATIVE ANALYSIS**

Impacts of the Disaster Recovery Reform Act of 2018



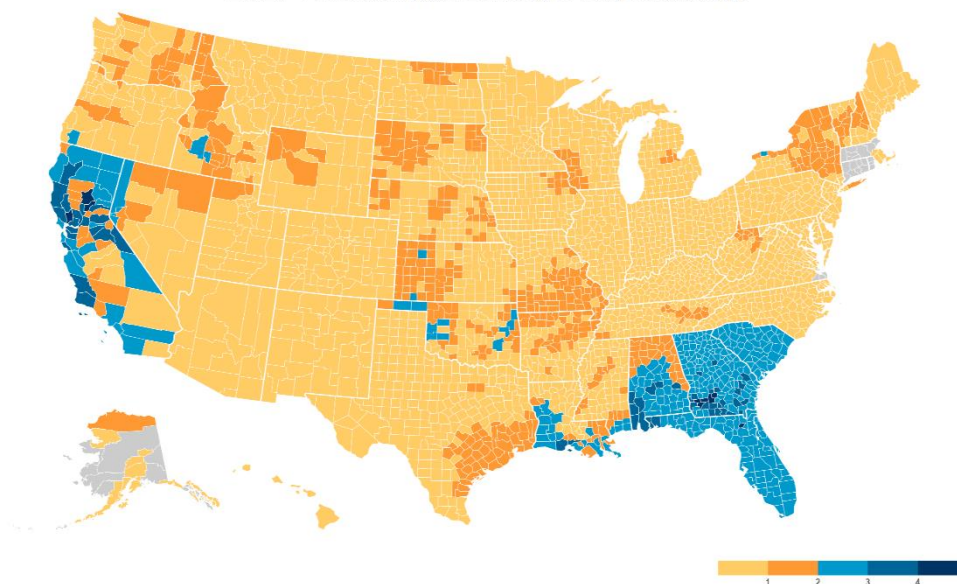
## NACo Analysis: Impacts of the Disaster Recovery Reform Act of 2018

On October 5, President Trump signed [H.R. 302](#), which contains the Disaster Recovery Reform Act of 2018 (DRRA), on a 93-6 vote. Given the intensity and impact of natural disasters in 2017, legislators worked to increase the capacity of state and local governments to build and maintain infrastructure to mitigate against future disasters. The DRRA is the result of many of these bipartisan efforts to ensure that communities are better positioned to mitigate against and respond to disasters.

The DRRA modifies several Federal Emergency Management Administration (FEMA) programs to better assist state and local disaster mitigation, preparedness, and recovery. **In a major win for counties, the legislation prohibits FEMA from attempting to recoup any aid provided more than three years after the date of its release.**

This analysis is part of NACo's ongoing advocacy to help strengthen federal support for county agencies on the frontlines of our nation's response to emergencies and disasters. NACo will work closely with FEMA as they implement the program reforms outlined in this analysis.

**2017 Presidential Disaster Declarations**



**Note:** This analysis is organized by assistance area and phase of emergency management: Hazard Mitigation, Disaster Recovery, and Preparedness. Due to the breadth of the reforms included in the DRRA, NACo prioritized analysis of provisions that present the greatest impact to counties.

☑ Symbols throughout the document denote policy reforms advocated by NACo that benefit counties

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# Analysis of Disaster Recovery Reform Act Impacts

## Changes to Hazard Mitigation Policy

### Pre-Disaster Mitigation

The DRRRA created the National Public Infrastructure Pre-Disaster Mitigation Program. This program will provide technical and financial assistance to state and local governments to:

- Establish and implement published consensus-based codes, specifications and standards
- Incorporate hazard-resistant designs and establish minimum acceptable criteria for hazard mitigation project design, construction and maintenance

 **Amount of Assistance:** The president may set aside from the Disaster Relief Fund, with respect to each major disaster, an amount equal to 6 percent of the estimated aggregate amount of federal assistance under the following programs: Essential Assistance, Public Assistance, Debris Removal, Individual Assistance, Unemployment Assistance and Crisis Counseling Assistance and Training. The aggregate amount must be set no later than 180 days after federal disaster declaration and cannot be reduced, increased or changed.

*“Right now, federal disaster programs are too reactive. We wait for disaster to strike and then try to clean up afterward, often rebuilding our homes, communities and infrastructure exactly the way they were before. Even when the way things were before may have been insufficient, inefficient or ineffective.”*

**Representative Bill Shuster (PA-9<sup>th</sup>)**  
Chair of US House Transportation and Infrastructure Committee – 115<sup>th</sup> Congress

This set aside will not reduce the amounts available under federal disaster assistance programs.

**New Criteria for Assistance:** This assistance is available to states that have experienced a major disaster declaration in the past seven years. As of 2018, all 50 states have experienced a federally declared disaster within that timeframe.

New criteria for assistance award will consider the extent to which a state or local government has facilitated the adoption and enforcement of the latest published editions of relevant consensus-based codes, specifications and standards, including amendments made by state and local governments during the adoption process that incorporate the latest hazard-resistant designs and establish criteria for hazard resistant residential structures and facilities.

**Sunset:** Unless reauthorized, the program will end five years after date of enactment.

### Hazard Mitigation Grant Program (HMGP)

**Federal Guidance on Property Acquisition:** Provides FEMA 180 days to issue guidance regarding the acquisition of property for open space as a mitigation measure under HMGP. FEMA will issue guidance to state governments that requires state hazard mitigation officers to provide written notification to each unit of government affected by property acquisition. The open space acquisition must be maintained per standards defined by the state-local Hazard Mitigation Grant Program agreement.

☑ **HMGP Management Costs Reimbursement:** State and local governments are eligible to receive up to 15 percent reimbursement (10 percent State Share/5 percent Local Share) for costs associated with administration of HMGP grants and projects.

**Earthquake Detection Mitigation Measures:** Counties that receive hazard mitigation assistance provided under Hazard Mitigation Grant Program and Pre-Disaster Mitigation Grant Program, may use the assistance to conduct mitigation activities in any area affected by earthquake hazards.

Recipients of HMGP can now use two hazard mitigation grant programs to fund mitigation measures including improvements to earthquake detection systems.

## Wildfire Prevention Mitigation Assistance and Additional Mitigation Activities

☑ **Wildfire Prevention:** Whether or not a major disaster is declared, the legislation provides recipients of Fire Management Assistance Grants (FMAG) with eligibility for Hazard Mitigation Grant Program assistance.

☑ **Additional Mitigation Activities:** Recipients may use this assistance to conduct activities to help reduce the risk of future damage, hardship, loss or suffering in any area affected by a wildfire or windstorm. Includes itemized list of additional mitigation activities that are eligible for assistance, such as:

- Mitigation Measures involving vegetation
- Culvert and other drainage system modifications
- Hardening of electrical transmission or distribution utility pole structures
- Removal of standing burned trees
- Replacement of water systems that have been burned and have caused contamination

*“NACo also supports federal funding of fire response and prevention activities, with continued assistance to state and local governments for combating the nation’s fire problem.”*

**NACo 2018-2019 Justice and Public Safety Steering Committee**  
American County Platform Fire and Wildfire Prevention and Control Policy Platform

## Changes to Disaster Recovery Policy

### Disaster Declaration Criteria

☑ **Extent of Local Impact:** For recommendations to the president regarding a major disaster declaration, FEMA must consider severe local impact or recent multiple disasters, along with preliminary damage assessment thresholds.

**Rulemaking:** No later than two years after the date of enactment, FEMA must review and initiate rulemaking to update the factors considered when evaluating a governor's request for a major disaster declaration. This includes reviewing how FEMA estimates the cost of major disaster assistance and impacts on the capacity of a jurisdiction to respond to disasters.

☑ **Required Stakeholder Engagement:** During the rulemaking process, FEMA must engage relevant representatives of state, regional and local government stakeholders.



*"Federal spending on disasters should be viewed in the context of corresponding spending by state and local governments, and the capacity of each level of government to fund disaster recovery efforts."*

**Commissioner Sallie Clark, El Paso County, Colorado**  
Statement before the U.S. House Transportation and Infrastructure Committee, Subcommittee on Economic Development, Public Buildings, and Emergency Management

### Individual Assistance Program

**Reimbursement of State Administration of Assistance for Direct Temporary Housing and Permanent Housing Construction Compliance and Reimbursement:** The DRRRA sets parameters (i.e. a housing strategy, demonstrated ability, federal rules compliance) by which states can request self-administration of assistance to individuals and households (Individual Assistance).

☑ FEMA will reimburse state and local governments for locally implemented housing solutions, if assistance is requested within three years of the disaster declaration. Counties can receive up to 50 percent of the cost of the FEMA solution or the locally implemented solution, based on the lowest cost option.

**Exclusion of rental housing cost from assistance limitation:** Excludes rental of alternate housing from the \$25,000 limitation and makes allowances for accessibility-related improvements to damaged properties.

Rental assistance received by eligible individuals is excluded from the amount limitation. Impacted county residents may now receive Federal assistance for rental costs. Alternative housing rental assistance will not impact their progress towards the \$25,000 limitation on individual assistance.

☑ **Prohibition of Recoupment:** Allows the president to waive a debt owed by an individual or household if the disbursement of the assistance was an error by the Federal Government. Recoupment of funding distributed by FEMA cannot occur more than three years after date the funding was received.

This waiver can be removed if FEMA’s error rate exceeds 4 percent of the total amount of federal disaster assistance distributed.

## Community Development Block Grant (CDBG)

☑ **Supplemental Appropriation:** DRRRA included a \$1.8 billion appropriation for CDBG – Disaster Recovery (CDBG-DR) Program through the Department of Housing and Urban Development (HUD). Through this increase in funding HUD provides to supplement other disaster recovery assistance programs administered by FEMA, Small Business Administration, and the Army Corp of Engineers. CDBG-DR funding is used by local governments to cover necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing and economic revitalization.



*“States and local governments know what is best for their affected communities, and CDBG-DR allows them to have a great deal of discretion in determining how to effectively respond to those disaster recovery needs.”*

**Commissioner Rodney Ellis, Harris County, Texas**  
Statement before the Subcommittee on Oversight and Investigations Committee

## Public Assistance

☑ **Federal Assistance to Implement Codes and Standards:** DRRRA provides federal emergency assistance to state and local governments to help them address building code and floodplain management.

**Use of Assistance:** State and local governments can use this assistance for building code and floodplain management ordinance administration and enforcement, including inspections for substantial damage compliance.

**Reimbursement of Overtime Wages and Additional Staffing:** DRRRA provides Public Assistance Program reimbursement to state and local governments for base and overtime wages for extra hires to facilitate the implementation and enforcement of adopted building codes for up to 180 days after a major disaster is declared.

**Retroactive application:** This amendment applies to disasters declared on or after August 1, 2017, or disasters for which a cost estimate has not yet been finalized for a project, or for any project for which the finalized cost estimate is under appeal.

**Relief from “stacked” National Flood Insurance Program (NFIP) Reductions:** The Stafford Act previously required a reduction in assistance provided for repair or replacement of a facility in a Special Flood Hazard Area that was not covered by flood insurance. This reduction would be applied to each individual building in the case of multi-unit campuses (i.e. medical facilities, educational campuses, law enforcement facilities). The DRRRA states 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 through December 31, 2018.

☑ **Statute of Limitations:** FEMA is now prohibited from initiating any action to recover assistance after “the date that is three years after the date of transmission of the final expenditure report for project completion...” meaning the three years will begin on a project by project basis. Previously, the three year statute of limitations started when the state submitted its final expenditure report for *all* projects. This amendment applies retroactively to disasters declared on or after **January 1, 2004** and terminates any pending action that would now be prohibited under the Stafford Act Section 705 (a).

☑ **De-obligation of Assistance:** FEMA must restore any funding of covered disaster assistance that was previously provided but subsequently withdrawn or de-obligated. Restoration of de-obligated funding can be initiated if a federal audit determines that a contract procurement and assistance utilization complied with federal assistance requirements, but the local government relied on inaccurate information to determine that relevant contracts were eligible. This provision also applies to Debris Removal Assistance and federal response assistance (Essential Assistance).

*“Support legislation that prohibits the Federal Emergency Management Agency (FEMA) from de-obligating from counties previously-awarded disaster funds for projects that have been certified complete by the state for at least three years.”*

**Florida Association of Counties**  
2018 Federal Action Plan

☑ **Right of Arbitration:** The right of arbitration to any applicant disputing a FEMA decision regarding the eligibility for or repayment of assistance where the amount in dispute is more the \$500,000 or more than \$100,000 for rural applicants.

☑ **Alternative Procedures:** Prohibits the president from making receipt of federal assistance provided under the Stafford Act contingent upon use of alternative federal assistance compliance procedures.

**Close-out Incentives and Penalties:** FEMA must meet its responsibilities to improve closeout practices and reduce the time to close disaster program awards. To accomplish this, FEMA may develop incentives and penalties that encourage state, local and tribal governments to close out expenditures and activities related to disaster or emergency assistance on a timely basis.

FEMA may, but is not required to, establish incentives and penalties that would impact local governments if they expedite or experience delays during closeout of disaster recovery assistance programs, such as Public Assistance and Individual Assistance.

**Guidance on Inundated and Submerged Roads:** FEMA, in coordination with the Federal Highway Administration (FHA), must develop and issue guidance regarding inundated and submerged roads damaged or destroyed by a major disaster.

FEMA and FHA will issue new guidance to local governments regarding repair, restoration and replacement of inundated and submerged roads, and for associated costs of post-disaster mitigation measures that are eligible for Public Assistance Mitigation funding.

☑ **Cost Share Changes:** Public Assistance management cost reimbursement has been increased to 12 percent (7 percent State Share/5 percent Local Share)



## Changes to Preparedness Policy

### Emergency Management Preparedness Grant (EMPG) Emergency Management Assistance Compact (EMAC) Reauthorization

☑ Authorizes EMPG and EMAC funding availability through 2022, ensuring counties will have access to critical emergency preparedness grant funding and mutual aid during disasters.

**EMPG Funding:** Emergency Management Performance Grants (EMPG) Program is reauthorized at \$950,000,000 per year through 2022. However, the House and Senate Homeland Security appropriations bills contain **\$350,000,000** for EMPG funding.

**EMAC Funding:** Emergency Management Assistance Compact (EMAC) Grants are reauthorized at \$4,000,000 per year through 2022.

*"EMPG is essential for building and sustaining critical capabilities...The impact of this program is validated in the 50-50 matching requirement which at least doubles the Federal investment and the professionalism of local and state emergency managers working tirelessly to avoid events from escalating and requiring Federal assistance."*

**NACo with NEMA, IAEM, and Big City Emergency Managers**

July 2018 Letter to Senate Committee on Appropriations

### National Veterinary Emergency Response Teams

DRRA establishes a program to develop National Veterinary Emergency Teams that will deploy with the National Search and Rescue Response System. These teams will assist with veterinary care of canine search teams, locating and treating companion animals, service animals, livestock and other animals. This team will also perform surveillance and treatment of zoonotic diseases.

FEMA may establish one or more veterinary emergency teams at accredited colleges of veterinary medicine to recruit, train and certify veterinary professionals, including veterinary students. This program will also assist state and local governments in developing emergency management and evacuation plans that account for the care and rescue of animals and improve local readiness for providing veterinary response during emergencies.

### Guidance on Prioritization of Healthcare and Long-term Care Facilities

FEMA must provide guidance and training on an annual basis to state, local and tribal governments, first responders and utility providers on the need to prioritize assistance to ensure certain facilities remain functional and/or return to functional operations as soon as practicable during power outages caused by natural hazards.

No later than 180 days after the enactment of this legislation, FEMA must issue guidance to state and local governments and other governmental and private sector partners regarding health care and long-term care facility prioritization and resiliency including:

- Preparedness for power outages

- Coordination of emergency response planning among state and local governments, health care providers, and power utility providers

## Evacuation Guidance

The legislation requires FEMA to develop and issue guidance regarding the identification and maintenance of evacuation routes.

FEMA will issue guidance on evacuation considerations such as:

- Access and functional needs
- Public information during evacuations
- Sheltering
- Reliability of routes
- Design and construction
- Capacity of routes
- Other items as considered appropriate by FEMA

## Guidance and Training by FEMA on coordination of emergency response plans

No later than 180 days after this enactment, FEMA must provide guidance and training on an annual basis to state and local governments, first responders and facilities that store hazardous materials on coordination of emergency response plans in the event of a major disaster or emergency.

The guidance and training shall include:

- Providing a list of equipment required to respond to a hazardous substance release
- Guidance on health risks to improve treatment response
- Best practices for mitigating future danger to communities from hazardous substances

## FEMA Report on Duplication in non-natural disaster preparedness grant programs

No later than 180 days after the date of enactment, FEMA must submit a report to Congress on the results of efforts to identify and prevent unnecessary duplication within and across non-natural disaster preparedness grant programs (security preparedness grants). The programs that will be assessed for duplication include:

- Urban Area Security Initiative
- Port Security Grant Program
- State Homeland Security Grant Program
- Transit Security Grant Program

*NACo continues to oppose the complete consolidation of the existing Homeland Security and Emergency Management grant programs, and requests that Congress mandate that DHS and FEMA actively include county Emergency Managers in creating alternatives that will better address the needs of all levels of government and that does not discard the advances gained through past grants.*

### **NACo 2018-2019 Justice and Public Safety Steering Committee**

American County Platform Resolution on Fair Restructuring of Homeland Security and Emergency Management Grants

**Potential Impact:** State and local governments will need to engage with FEMA to ensure these programs are kept separate to continue maintenance and development of state and local security capabilities.

### Defining “Resilient”

**New Rules:** No later than 18 months after the date of enactment of the DRRRA, FEMA in consultation with the heads of relevant federal departments and agencies must issue a final rulemaking that defines the terms “resilient” and “resiliency”. No later than 90 days after FEMA issues final rulemaking, FEMA must issue any necessary guidance related to the final definition of “resilient” and “resiliency”.

**Interim Guidance:** No later than 60 days after the date of DRRRA enactment, FEMA must issue interim guidance on the definitions.