



Mortgage and Rental Assistance as Disaster Relief: Legislation in the 111th Congress

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Summary

During the first session of the 111th Congress, Representative Oberstar, along with co-sponsors Representative Mica, Representative Holmes-Norton, and Representative Mario Diaz-Balart introduced H.R. 3377, the Disaster Response, Recovery and Mitigation Enhancement Act of 2009. Along with other provisions, the legislation would reinstate a Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288, as amended) provision that provided mortgage and rental assistance to disaster victims. Previously, Senators Feinstein and Boxer had introduced S. 2386, the Mortgage and Rental Disaster Relief Act of 2007. Mortgage and Rental Assistance (MRA) had been dropped from the Stafford Act by P.L. 106-390, the Disaster Mitigation Act of 2000 (DMA2K).

MRA provided economic aid to help households remain in their residences by assisting with mortgage or rent payments for a period of up to eighteen months. This is distinct from temporary housing assistance under the Stafford Act that provides rental assistance due to disaster damage that makes a residence uninhabitable. For MRA help, the applicant had to prove a loss of income due to the disaster event.

The MRA provision in H.R. 3377 is similar to the original Stafford Act language in providing such emergency help for up to 18 months. However, the new proposed provision emphasizes eligibility based on “imminent risk” rather than “written notice.” An earlier Senate bill to reauthorize MRA, S. 2386, differed from the original Stafford MRA provision in that it established eligibility based on an income threshold in order for an applicant to qualify for the proposed MRA assistance.

This report summarizes the previous MRA provision administered by the Federal Emergency Management Agency, the issues that were a part of the discussion prior to its removal in P.L. 106-390, and questions that have been raised since 2000 regarding mortgage and rental assistance.

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History of MRA and its Implementation

From 1970 through 2000 the Stafford Act¹ authorized the President to provide assistance to disaster victims unable to make mortgage or rental payments after a major disaster.

(b) Temporary mortgage and rental payments

The President is authorized to provide assistance on a temporary basis in the form of mortgage or rental payments to or on behalf of individuals and families who, as a result of financial hardship caused by a major disaster, have received written notice of dispossession or eviction from a residence by reason of foreclosure of any mortgage or lien, cancellation of any contract of sale, or termination of any lease, entered into prior to such disaster. Such assistance shall be provided for the duration of the period of financial hardship but not to exceed 18 months.²

This provision was removed from the act in P.L. 106-390, the Disaster Mitigation Act of 2000 (DMA2K).

MRA authority was rarely used in comparison with other Stafford provisions such as temporary housing, disaster unemployment assistance, or crisis counseling.³ In testimony during the 108th Congress, then Department of Homeland Security (DHS) Deputy Inspector General Richard L. Skinner noted:

FEMA historically has not had to implement the Mortgage and Rental Assistance (MRA) program on a large scale because previous disasters did not coincide with nor result in widespread unemployment and national economic losses. From the inception of MRA until September 11, 2001, only \$18.1 million had been awarded under the program for 68 declared disasters, compared to approximately \$76 million as a result of the New York disaster alone.⁴

The total of \$18.1 million is a small component of the disaster relief program that has received appropriations in excess of \$200 billion over the last 18 years.⁵ When the amount expended for MRA is averaged for 68 disasters, the average amount provided per disaster was approximately \$265,000 per event. Not only was the amount spent on MRA relatively small, but it was used in few disasters, only 6% out of the 1,400 declarations during the three decades it was in existence.⁶

MRA did provide significant assistance after a December 1998 freeze in California. This event had a direct effect on workers who were employed in the agricultural sector in need of short term

¹ The Stafford Act (P.L. 93-288 as amended, 42 U.S.C. 5121 et. seq.) establishes the basic authorities for federal disaster relief assistance. This assistance supplements the work of state and local governments and provides help for needs that are not addressed by insurance. The Stafford Act, through a delegation from the President, is administered by the Federal Emergency Management Agency (FEMA), a part of the Department of Homeland Security (DHS).

² 42 U.S.C. § 5174, 84 Stat. 1752.

³ 42 U.S.C. § 5174, 5177, and 5183.

⁴ U.S. Congress, Senate Committee on Environment and Public Works, Testimony of Richard L. Skinner, *OIG Response to September 11*, 108th Congress, 1st Sess., September 24, 2003, p.2.

⁵ For more information see CRS Report RL33226, *Emergency Supplemental Appropriations Legislation for Disaster Assistance: Summary Data*, by (name redacted) and (name redacted) and CRS Report RL33053, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*, by (name redacted).

⁶ U.S. Department of Homeland Security, Federal Emergency Management Agency, "Major Disaster Declarations," at <http://www.fema.gov/news/disasters.fema?year=2001#sev1>.

help to retain their homes and apartments. During the following year, more than 6,000 individuals registered for MRA assistance with an estimated program cost of nearly \$7 million.⁷

The most expensive or costly use of MRA, as referenced in Mr. Skinner's testimony, was the 9/11 terrorist attack in New York City; FEMA distributed \$76 million for mortgage and rental assistance, more than four times the amount of total spending in the program's history. The 9/11 event came after the passage of P.L. 106-390 which had deleted the MRA program from the Stafford Act. However, the changes did not take effect until the corresponding regulatory changes had been implemented on May 1, 2002. As a result, program funds were available to those suffering economic losses in New York City following the September 11, 2001 attacks.

MRA Retention/Deletion

FEMA had rarely used its MRA authority when Congress considered DMA2K. While some FEMA staff had understood and valued the utility of the program for events such as the California freeze declaration previously discussed, the staff also considered the program an administrative burden. The administrative problems associated with the MRA program discussed by FEMA staff included:

- 1) defining the victim (i.e. distinguishing between a disaster victim and a victim of general economic downturns); 2) determining the extent of an applicant's inability to pay rent or a mortgage (percentage of loss of income does not take into account assets that an applicant might have independent of a reduction in one's salary); 3) administrative difficulty of documenting case files (verifying loss of income and lateness in paying mortgage or rent is time-consuming, and applicants subsisting in a cash economy often have little documentation to support their MRA applications); and 4) determining the appropriate period for the provision of MRA assistance.⁸

While some observers considered elimination of the program justified by its infrequent use and difficulty in administration, others, such as the regional staff that had managed MRA in the field, considered the program a practical option for meeting certain needs created by some disasters.

The minimal use of the previous MRA program after most disasters is difficult to ascribe to any one explanation. While some have posited FEMA's reluctant stewardship of the program to its infrequent use, others point to the rare incidence of the type of disaster that would have such a devastating economic impact over a prolonged period of time that would require MRA assistance.

The decision to eliminate the program was influenced by cost considerations, since its removal did reduce estimated spending under the Stafford Act. The Administration and Congress were in accord that savings were needed since DMA2K would potentially increase mitigation spending within the Stafford Act.

Since its authority expired in 2002, the MRA program was not available in the aftermath of the Gulf Coast hurricanes of 2005. The absence of the program at that time did not evoke

⁷ U.S. Department of Homeland Security - Federal Emergency Management Agency, "California Freeze Disaster Assistance Deadline Approaches," August 2, 1999, Release Number 1267-23, at <http://www.fema.gov/newsrelease.fema?id=9768>.

⁸ U.S. Federal Emergency Management Agency, Draft Memorandum, "Mortgage and Rental Assistance" by Mike Hirsch, former FEMA Deputy General Counsel, May, 2003.

controversy, arguably due to the initiative taken by many lenders and mortgage holding institutions to alleviate the pressure on mortgagors following the hurricane events. This was accomplished through suspended payment schedules and other initiatives undertaken to lessen the impact on those affected by the hurricanes.⁹ These were special steps taken in reaction to the massive impact of the 2005 hurricane season; mortgage holders do not routinely take such actions following disaster events.

The program remained unavailable following the hurricane season of 2008 in which hurricanes Gustav and Ike inflicted damage on many homes along the Gulf Coast.

MRA and the 9/11 Disaster

As noted earlier, expenditures for the MRA program following the World Trade Center attacks were the largest in the history of the program. Given the unique nature of the disaster, it also posed many problems for the administration of the MRA program. The sheer nature of the attack, and its reverberations in the national economy, meant that FEMA had to decide how to define the area of eligibility and the connection to the disaster event. Since 9/11 was considered an event of national scope, it was argued by some that the national economy was affected, and therefore eligibility for MRA assistance should be determined on a nationwide basis. Later, under Congressional pressure, FEMA expanded the eligibility guidelines, but only for residents in New York City.¹⁰

FEMA initially determined that applicants were eligible for MRA assistance if they lived in certain areas near the World Trade Center site and had lost 25 percent or more of their income as a result of the disaster. But the actual guidelines for eligibility changed during the recovery period.¹¹ As the General Accounting Office noted in a report on 9/11 federal activities:

FEMA, as directed by the Congress, extended assistance to those who lost 25 percent or more of their income working anywhere in Manhattan, to those whose employers were not located in Manhattan but were economically dependent on a Manhattan firm; and to anyone living in Manhattan who commuted off the island and who suffered financially because of the post-September 11 travel restrictions.

In a December 2002 report that examined this program, FEMA's Office of Inspector General (IG) noted that the unique nature of the disaster and its economic impact required FEMA officials to expand eligibility guidelines more broadly than ever before. This resulted in FEMA having to reevaluate applications, reverse previous determinations to deny benefits, and attempt to contact applicants initially denied but now eligible under the expanded guidelines.¹²

⁹ For more information see CRS Report RL34087, *FEMA Disaster Housing and Hurricane Katrina: Overview, Analysis, and Congressional Issues*, by (name redacted), pp. 23 and 24.

¹⁰ David W. Chen, "After Criticism, US Broadens 9/11 Aid Pool," *New York Times*, at <http://query.nytimes.com/gst/fullpage.html?res=950DE5D9113EF9A15755COA9649C8B63>.

¹¹ U.S. Department of Homeland Security - Federal Emergency Management Agency, "FEMA Expands Guidelines to Assist More Individuals," Release - 1391-122, June 18, 2002, at <http://www.fema.gov/news/newsrelease.fema?id=5570>.

¹² U.S. General Accounting Office, *September 11 - Overview of Federal Disaster Assistance to the New York City Area*, GAO-04-72, October 2003, at <http://www.gao.gov/new.items/d0472.pdf>.

The administrative challenges of the 9/11 program in New York identified in the IG report appeared to confirm the reluctance among FEMA leadership to revive the MRA program within FEMA's authorizing legislation or even to suggest such an action in the wake of the hurricane seasons of 2004 and 2005. FEMA staff reportedly did consider options for the revival of the program, including a further delineation of eligibility for the program; transfer of the program to other federal entities; and transfer of administrative responsibility to a private sector agency or organization.¹³ However, these options were never presented as a legislative proposal to the authorizing committees of Congress.

Analysis of Legislative Proposal

The MRA provision in H.R. 3377 states:

(5) TEMPORARY MORTGAGE AND RENTAL PAYMENTS- The President may provide assistance on a temporary basis in the form of mortgage or rental payments to or on behalf of individuals and families who, as a result of financial hardship caused by a major disaster, are at imminent risk of dispossession or eviction from a residence by reason of foreclosure of any mortgage or lien, cancellation of any contract for sale, or termination of any lease, entered into prior to such disaster. Such assistance shall be provided for the duration of the period of financial hardship, but not to exceed 18 months of assistance or the maximum amount of assistance that is authorized to be provided pursuant to subsection (h).'

The provision for MRA within H.R. 3377 arguably works from several assumptions:

- In re-stating much of the original Stafford Act language, the bill anticipates that FEMA should be familiar with this authority and able to administer the provision.
- The proposed bill would maintain the same 18 month time frame for potential assistance that was a part of the previous MRA program. That time period also conforms to FEMA's temporary housing assistance program.
- A significant change in language between the new MRA provision and the previous Stafford Act language is the passage that notes assistance may be provided when a mortgage holder is at "imminent risk" of dispossession or eviction rather than the "written notice" provision that was in the original MRA Stafford Act section. Because laws and procedures vary among states and their subdivisions, waiting for "written notice" before taking action under the MRA section may, in some cases, negate the intent of the law, which is to keep the family or individual in the house they occupied at the time of the disaster. The term "imminent risk" provides more flexibility in administering the provision so that the MRA payments are effective in stabilizing the disaster victims' housing situation rather than making a payment that does not prevent a dispossession or eviction from the home.

¹³ Ibid. Hirsch.

- While addressing those key elements of the MRA program, the bill does not identify the agency or department that would be charged with implementation, instead providing the authority, like almost all of the Stafford Act, to the discretion of the President. A recurring FEMA concern, as addressed by staff in conversation regarding the MRA program, was that it (FEMA) was not the appropriate agency to administer this program. Among other questions has been the ability of FEMA to manage a program that is based on individual economic distress. However, those same concerns could arguably apply to other forms of assistance currently provided by FEMA, such as temporary housing assistance and other forms of financial aid provided through the Other Needs Assistance program.¹⁴
- Further, though H.R. 3377 does not direct FEMA to obtain professional expertise from other departments, that would remain an option since similar collaboration already occurs in other Stafford Act programs that FEMA administers. For example, while DHS and FEMA coordinate disaster relief on behalf of the President, FEMA receives assistance from two other federal departments in the delivery of federal Stafford Act assistance. The Department of Health and Human Services provides program guidance and monitoring of the Stafford Act's Crisis Counseling program¹⁵ and the Department of Labor assists in the administration of the Disaster Unemployment Assistance (DUA) program.¹⁶

Even absent an MRA program, many of the remedies used in the aftermath of Katrina (rescheduling payment calendars, modification of loan terms, moratoriums on foreclosures), may already be available for Federal Housing Authority (FHA)-insured mortgages.¹⁷ However, forbearance following Katrina for mortgages not under the FHA program was ad hoc. Another source of current relief is in the agricultural sector. The U.S. Department of Agriculture's (USDA) Rural Housing Service has issued a Request for Proposal to assist low income farm workers during emergencies and disasters. One of the eligible categories for assistance listed under this special program is "assistance in meeting rent or mortgage payments."¹⁸ P.L. 110-28 appropriated \$16 million for emergency services for migrant workers.¹⁹

In sum, H.R. 3377 would restore the MRA after a hiatus of nearly eight years, dating to May 2002. The reauthorization of MRA would add an additional option for FEMA to meet the unique needs of disaster victims. However, possible opponents may question the need for additional expense for the Disaster Relief Fund and overall disaster costs as well as additional administrative burdens at this time for FEMA.

¹⁴ 42 U.S.C. § 5174.

¹⁵ See CRS Report RL33738, *Gulf Coast Hurricanes: Addressing Survivors' Mental Health and Substance Abuse Treatment Needs*, by (name redacted), (name redacted), and (name redacted).

¹⁶ See CRS Report RS22022, *Disaster Unemployment Assistance (DUA)*, by (name redacted) and (name redacted).

¹⁷ For more information, see CRS Report RS22358, *The Role of HUD Housing Programs in Response to Hurricane Katrina*, by (name redacted) et al..

¹⁸ U.S. Department of Agriculture, "Request for Proposals: The National Emergency or Disaster Grants To Assist Low-Income Migrant and Seasonal Farmworkers," *73 Federal Register* 6467, February 4, 2008.

¹⁹ P.L. 110-28, 121 Stat. 218.

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