

AMENDING 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

APRIL 28, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 1678]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 1678) 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, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE OF LEGISLATION

H.R. 1678 amends the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) concerning the statute of limitations for actions to recover disaster or emergency assistance.

BACKGROUND AND NEED FOR LEGISLATION

Federal Emergency Management Agency: History

The Federal Emergency Management Agency (FEMA) was established in 1979 by Executive Order 12148 by President Jimmy Carter in response to a number of massive disasters in the 1960s and 1970s. As a result of states trying to manage these disasters, the National Governors Association and others made a proposal to streamline and cut the number of agencies states were required to work with following a disaster. Prior to the creation of FEMA, the federal government's emergency response mechanisms were scattered among many agencies throughout government. The creation of FEMA helped to centralize these authorities and the coordination of the federal government's response to a disaster. The Disaster Relief Act of 1974 (P.L. 93-288), which constituted the statutory authority for most federal disaster response activities, especially of FEMA, was later amended by the Stafford Act (P.L. 100-707).

Following more than two decades as an independent agency, the Homeland Security Act of 2002 (P.L. 107-296) created the Department of Homeland Security (DHS), placed FEMA within DHS, and FEMA's functions were dispersed among various offices and directorates within DHS. In 2006, following Hurricanes Katrina and Rita and the intensive Congressional investigations and oversight, Congress enacted the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) (P.L. 109-295), which addresses key response roles and authorities and put FEMA back together again within DHS. PKEMRA authorized the National Preparedness System and FEMA for the first time in legislation. Most recently, Congress enacted the Sandy Recovery Improvement Act (SRIA) (P.L. 113-2), on January 29, 2013, in the wake of Hurricane Sandy's impact to the East Coast. SRIA provided additional authorities to expedite and streamline Hurricane Sandy recovery efforts, reduce costs, and improve the effectiveness of several disaster assistance programs authorized by the Stafford Act.

Disaster response and recovery

When the President declares a major disaster or emergency, the official declaration triggers certain federal response authorities and financial disaster assistance. In particular, when a declaration is made, the President is authorized to direct any federal agency, with or without reimbursement, to assist state and local governments and protect life and property. FEMA is responsible for coordinating federal agency response and ensuring the necessary federal capabilities are deployed at the appropriate place and time in support of state and local response efforts. In addition, FEMA provides direct support and financial assistance to states and local governments and individuals as authorized under the Stafford Act.

Statute of limitations

H.R. 1678 clarifies the three-year statute of limitations on FEMA actions to recover funds from grantees, and establishes that the statute of limitations begins to run when each project has been concluded. FEMA's existing regulations for "payment of claims" requires that each subgrantee notify the state when all projects have been completed. The Committee understands FEMA does not have a consistent form for how this notification is provided. Therefore, FEMA should accept reasonable notifications submitted to meet this requirement as satisfaction of meeting the requirement to submit an "expenditure report for project completion as certified by the grantee," as stated in the legislation. This can include a final letter indicating completion or other written communication that funds have been expended and the project is complete. The Committee urges FEMA to work closely with grantees to encourage the timely closeout of projects. The Committee also encourages FEMA to develop a uniform process and clear guidance for grantees and subgrantees to meet this requirement.

This legislative change is applicable to any action FEMA has pending against a state, local, or tribal government to recover disaster assistance payments where the grantee has not received a final agency determination (e.g., the applicant has not exhausted all administrative remedies and their appeals have not concluded).

HEARINGS

The Subcommittee on Economic Development, Public Buildings, and Emergency Management, held no hearings on this topic in the 115th Congress. However, the following hearings and roundtable discussions were held by the Subcommittee on subjects related to matters contained in H.R. 1678 during the 114th Congress:

"Rebuilding after the Storm: Lessening Impacts and Speeding Recovery" held on January 27, 2015. The purpose of the hearing was to launch an assessment of the rising costs of disasters, the cost effectiveness of disaster assistance, strategies to reduce disaster losses, and the appropriate roles of government and the private sector, and to consider reforms to save lives through improved alerts and warning systems and search and rescue.

"What is Driving the Increasing Costs and Rising Losses from Disasters?" held on March 18, 2015. The purpose of the roundtable was to examine and discuss data related to disaster costs, the trends observed over time, and the projections for the future given the policies in place today.

"The State of Pennsylvania and FEMA Region III are Leaders in Mitigating Disaster Costs and Losses" held on May 28, 2015. The purpose of the roundtable was to examine disaster costs and losses, focus on hazards impacting Pennsylvania and the region, and identify best practices for mitigating and avoiding disaster impacts.

"Federal Disaster Assistance: Roles, Programs and Coordination" held on June 17, 2015. The purpose of the roundtable was to examine and discuss federal disaster assistance programs, the requirements and effectiveness of those programs, and coordination among various agencies and stakeholders.

“Controlling the Rising Cost of Federal Responses to Disaster” held on May 12, 2016. The purpose of the hearing was to begin exploring potential solutions and the principles that should be driving solutions to lower the overall costs of disasters and to help avoid devastating losses.

LEGISLATIVE HISTORY AND CONSIDERATION

On March 22, 2017, Congresswoman Lois Frankel (D–FL) introduced H.R. 1678, a bill to amend the Stafford Act concerning the statute of limitations for actions to recover disaster or emergency assistance payments.

On March 29, 2017, the Committee on Transportation and Infrastructure met in open session to consider H.R. 1678. The Committee ordered the bill reported favorably to the House by voice vote with a quorum present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes taken in connection with consideration of H.R. 1678 or ordering the measure reported. A motion to order H.R. 1678 reported favorably to the House was agreed to by voice vote with a quorum present.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 1678 from the Director of the Congressional Budget Office:

APRIL 20, 2017.

Hon. BILL SHUSTER,
Chairman, Committee on Transportation and Infrastructure,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1678, a bill 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.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 1678—A bill 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 would establish a three-year statute of limitations on actions to recover Federal Emergency Management Agency (FEMA) grants provided to state or local governments following a declared disaster. That limitation would not apply in situations where there is evidence of fraud, waste, or abuse. Under current law, FEMA has the authority to recover disaster assistance grants that are unspent at any time after the date of disbursement.

Enacting H.R. 1678 could reduce the amount of unspent disaster assistance recovered by FEMA. The loss of such recoveries, which are treated as reductions in direct spending when they are collected, would increase direct spending of previously appropriated funds; therefore, pay-as-you-go procedures apply. Those recoveries, which CBO estimates would not be significant in any year, are deposited into the Disaster Relief Fund and are available to be spent without further appropriation; therefore, CBO estimates that the net effect on the deficit would be negligible. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 1678 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1678 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Robert Reese. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goal and objective of this legislation is to amend the statute of limitations governing the Administrator of FEMA's actions to recover disaster or emergency assistance payments.

ADVISORY OF EARMARKS

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee is required to include a list of congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives. No provision in the bill includes an

earmark, limited tax benefit, or limited tariff benefit under clause 9(e), 9(f), or 9(g) of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 1678 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to section 3(i) of H. Res. 5, 115th Cong. (2017), the Committee finds that enacting H.R. 1678 does not direct the completion of a specific rule making within the meaning of section 551 of title 5, United States Code.

FEDERAL MANDATE STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 1678 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

APPLICABILITY OF LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

SECTION-BY-SECTION ANALYSIS OF LEGISLATION

Section 1: Statute of limitations

Section 1 amends the Stafford Act to reestablish a three-year statute of limitations once a report for project completion has been filed.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**ROBERT T. STAFFORD DISASTER RELIEF AND
EMERGENCY ASSISTANCE ACT**

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TITLE VII—MISCELLANEOUS

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SEC. 705. DISASTER GRANT CLOSEOUT PROCEDURES.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—**[Except]** *Notwithstanding section 3716(e) of title 31, United States Code, and except* as provided in paragraph (2), no administrative action to recover any payment made to a State or local government for disaster or emergency assistance under this Act shall be initiated in any forum after the date that is 3 years after the date of transmission of the final expenditure **[report for the disaster or emergency]** *report for project completion as certified by the grantee.*

(2) FRAUD EXCEPTION.—The limitation under paragraph (1) shall apply unless there is evidence of civil or criminal fraud.

(b) REBUTTAL OF PRESUMPTION OF RECORD MAINTENANCE.—

(1) IN GENERAL.—In any dispute arising under this section after the date that is 3 years after the date of transmission of the final expenditure report for the disaster or emergency, there shall be a presumption that accounting records were maintained that adequately identify the source and application of funds provided for financially assisted activities.

(2) AFFIRMATIVE EVIDENCE.—The presumption described in paragraph (1) may be rebutted only on production of affirmative evidence that the State or local government did not maintain documentation described in that paragraph.

(3) INABILITY TO PRODUCE DOCUMENTATION.—The inability of the Federal, State, or local government to produce source documentation supporting expenditure reports later than 3 years after the date of transmission of the final expenditure report shall not constitute evidence to rebut the presumption described in paragraph (1).

(4) RIGHT OF ACCESS.—The period during which the Federal, State, or local government has the right to access source documentation shall not be limited to the required 3-year retention period referred to in paragraph (3), but shall last as long as the records are maintained.

(c) BINDING NATURE OF GRANT REQUIREMENTS.—A State or local government shall not be liable for reimbursement or any other penalty for any payment made under this Act if—

- (1) the payment was authorized by an approved agreement specifying the costs;
- (2) the costs were reasonable; and
- (3) the purpose of the grant was accomplished.

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