Calendar No. 359

117TH CONGRESS, 2d Session | SENATE | REPORT 117–101

PREVENTING DISASTER REVICTIMIZATION ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

H.R. 539

TO AMEND THE DISASTER RECOVERY REFORM ACT OF 2018 TO REQUIRE THE ADMINISTRATOR OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY TO WAIVE CERTAIN DEBTS OWED TO THE UNITED STATES RELATED TO COVERED ASSISTANCE PROVIDED TO AN INDIVIDUAL OR HOUSEHOLD, AND FOR OTHER PURPOSES

MAY 3, 2022.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE
29–010 WASHINGTON : 2022

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

GARY C. PETERS, Michigan, *Chairman*

THOMAS R. CARPER, Delaware
MAGGIE HASSAN, New Hampshire
KYRSTEN SINEMA, Arizona
JACKY ROSEN, Nevada
ALEX PADILLA, California
JON OSSOFF, Georgia

ROB PORTMAN, Ohio
RON JOHNSON, Wisconsin
RAND PAUL, Kentucky
JAMES LANKFORD, Oklahoma
MITT ROMNEY, Utah
RICK SCOTT, Florida
JOSH HAWLEY, Missouri

DAVID M. WEINBERG, *Staff Director*
ZACHARY I. SCHRAM, *Chief Counsel*
CHRISTOPHER J. MULKINS, *Director of Homeland Security*
NAVEED JAZAYERI, *Senior Professional Staff Member*
PAMELA THIESSEN, *Minority Staff Director*
SAM J. MULOPULOS, *Minority Deputy Staff Director*
CLYDE E. HICKS JR., *Minority Senior Professional Staff Member*
LAURA W. KILBRIDE, *Chief Clerk*

Calendar No. 359

117TH CONGRESS 2d Session } SENATE { REPORT 117–101

PREVENTING DISASTER REVICTIMIZATION ACT

MAY 3, 2022.—Ordered to be printed

Mr. PETERS, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany H.R. 539]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (H.R. 539) to amend the Disaster Recovery Reform Act of 2018 to require the Administrator of the Federal Emergency Management Agency to waive certain debts owed to the United States related to covered assistance provided to an individual or household, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

I. PURPOSE AND SUMMARY

H.R. 539, the Preventing Disaster Revictimization Act, requires the Federal Emergency Management Agency (FEMA) to waive the debt of disaster relief recipients when the Agency later determines it mistakenly granted assistance, but the recipient committed no fraud and made no false claim or misrepresentation. This prevents FEMA from recouping, sometimes years after the fact, funds that were awarded to disaster victims when the victim acted in good faith and the error was on the part of the Agency.

II. Background and Need for the Legislation

Disaster victims rely on FEMA's Individual Assistance (IA) programs to help them recover from major disasters.[1] Individual disaster victims and families often use IA funds to cover immediate, pressing expenses including short- and medium-term lodging, basic repairs on primary residences, and necessary legal services and childcare.[2] FEMA has the statutory authority to recoup IA funds from recipients when those funds are used inappropriately or are obtained using fraud or false claims.[3]

In recent years, however, FEMA has used its authority to recover funds from disaster victims who, through no fault of their own, received disaster aid that FEMA later determined they were not qualified to receive.[4] These individuals, who are victims of major natural disasters, acted in good faith, and FEMA committed the error and returned to collect funds that were already spent.[5] For example, one victim whose Missouri home was destroyed by major flooding was awarded over $12,000 for home repairs and other expenses.[6] Months later, due to bureaucratic confusion caused by FEMA's denial of Missouri's first disaster assistance application and appeal, and acceptance of the second application, the Agency demanded that the victim pay back the money "or face garnished Social Security checks."[7] The Congressional Budget Office (CBO) estimates this bill would waive approximately $36 million in disaster relief debt from affected disaster victims who have been ordered to return their disaster aid.

H.R. 539 addresses this issue by requiring FEMA to waive the debt of disaster relief recipients when the Agency later determines that it mistakenly granted assistance but the recipient acted in good faith and without fraud, false claims, or misrepresentation. The bill also requires FEMA to report to Congress on the number of mistakes it makes in IA award determinations and on the Agency's efforts to minimize similar errors in the future.

III. Legislative History

Representative Sam Graves (R–MO–6) introduced H.R. 539, the Preventing Disaster Revictimization Act, on January 28, 2021. The bill was referred to the House Committee on Transportation and Infrastructure and the House Committee on the Budget. The House of Representatives passed the legislation under suspension of the rules by voice vote on June 15, 2021.

The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs on June 16, 2021. The Committee

---

[1] *See* Congressional Research Service, *FEMA Individual Assistance Programs: In Brief*, at 1 (R45085) (Jan. 31, 2018).

[2] *See id*. at 1–3.

[3] Federal Emergency Management Agency: *FEMA Explains Appeals Process for Recoupment Letters* (Nov. 19, 2020); 31 U.S.C. § 3711.

[4] *See, e.g.*, Letter from Rep. Frank Pallone Jr. et. al. to Rep. David Price et. al. (Apr. 30, 2021) (https://pallone.house.gov/sites/pallone.house.gov/files/FY22%20CDL_Clawbacks%20 Appropriations%20Request%20Letter.pdf) (detailing FEMA's efforts to claw back funds from Hurricane Sandy victims).

[5] Statement of Congresswoman Eleanor Holmes Norton, Congressional Record, H5857 (Nov. 17, 2020).

[6] Statement of Representative Sam Graves, Congressional Record, H5857 (Nov. 17, 2020).

[7] *See id.; see also* Jefferson City News Tribune, *FEMA Takes $12,400 Check Back from Flood Victim* (Dec. 9, 2019) (https://www.newstribune.com/news/local/story/2019/dec/09/fema-takes-12400-check-back-from-flood-victim/807514/).

considered H.R. 539 at a business meeting on July 14, 2021. During the business meeting, a modified amendment was offered by Senator Scott, which was not adopted by roll call vote of 4 yeas to 10 nays. Senators Johnson, Lankford, Scott, and Paul (by proxy) voted in the affirmative. Senators Peters, Carper, Hassan, Rosen, Padilla, Ossoff, Portman, Romney, Hawley, and Sinema (by proxy) voted in the negative. The Committee ordered the bill reported favorably by voice vote with Senators Peters, Hassan, Rosen, Padilla, Ossoff, Portman, Johnson, Lankford, Romney, Scott, and Hawley present. Senator Scott was recorded as voting "no."

IV. Section-by-Section Analysis of the Bill, as Reported

Section 1. Short title

This section designates the short title of the bill as the "Preventing Disaster Revictimization Act."

Section 2. Flexibility

This section amends 42 U.S.C. § 5174a to require the Administrator of FEMA to waive debts related to IA distributed to individuals or households if the distribution was based on an error by FEMA and the debt is construed as a hardship. Moreover, this section requires FEMA to waive debts related to IA if it is subject to a claim or legal action.

Additionally, this section eliminates the cap on debt waivers and replaces it with a requirement that FEMA report to Congress on actions taken by the Agency to reduce the error rate in IA.

Section 3. Report to Congress

This section requires FEMA to report to Congress on the internal processes used to make decisions regarding distribution of IA and any changes made to those processes.

Section 4. Determination of budgetary effects

This section specifies that the budgetary effects of this bill will be determined by referring to the "Budgetary Effects of PAYGO Legislation."

V. Evaluation of Regulatory Impact

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 9, 2021.

Hon. GARY C. PETERS,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 539, the Preventing Disaster Revictimization Act.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 539, Preventing Disaster Revictimization Act
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on July 14, 2021

By Fiscal Year, Millions of Dollars	2021	2021-2026	2021-2031
Direct Spending (Outlays)	0	2	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	2	0
Spending Subject to Appropriation (Outlays)	0	34	36

Statutory pay-as-you-go procedures apply?	Yes	**Mandate Effects**	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

Except in cases involving fraud, H.R. 539 would require the Federal Emergency Management Agency (FEMA) to waive the collection of improper payments provided to individuals or households after major disasters declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The act also would require FEMA to report on its processes for determining the distribution of disaster assistance.

Under current law, FEMA must recoup improper payments, which can stem from errors in processing or from duplicate payments. Recouped amounts are deposited into the Disaster Relief Fund and are available to spend without further appropriation. The agency currently has limited discretion to waive debts.

CBO assumes that the legislation will be enacted late in fiscal year 2021. Accordingly, the budgetary effects would begin in 2022. Using information from the agency, CBO estimates that, in nearly all eligible cases under the act, FEMA would waive collections, which currently total $36 million. Those collections are recorded as reductions in direct spending, so waiving them would increase direct spending. However, those amounts would have been available to spend, so the bill also would reduce outlays. Because collections precede spending, enacting the bill would increase direct spending by $2 million over the 2021–2026 period but would have no net effect on direct spending over the 2021–2031 period.

The act would not change FEMA's authority to provide disaster relief; therefore, in CBO's view H.R. 539 also would implicitly authorize the appropriation of amounts equal to the forgone recoveries. Thus, CBO estimates that implementing the act would cost $36 million over the 2021–2031 period, assuming appropriation of the necessary amounts.

CBO estimates that the cost to FEMA of reporting on the distribution of disaster assistance to individuals and households would not be significant.

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those procedures are shown in Table 1.

TABLE 1.—CBO'S ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS OF H.R. 539, THE PREVENTING DISASTER REVICTIMIZATION ACT, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS ON JULY 14, 2021

	By fiscal year, millions of dollars—												
	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2021–2026	2021–2031
	Net Increase or Decrease (−) in the Deficit												
Pay-As-You-Go Effect	0	4	0	0	−1	−1	−2	0	0	0	0	2	0

On June 14, 2021, CBO transmitted a cost estimate for H.R. 539, the Preventing Disaster Revictimization Act, as ordered reported by the House Committee on Transportation and Infrastructure on March 24, 2021. The two pieces of legislation are similar, and CBO's estimates of their budgetary effects are the same.

The CBO staff contact for this estimate is Jon Sperl. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * * * *

TITLE 42—THE PUBLIC HEALTH AND WELFARE

* * * * * * *

CHAPTER 68—DISASTER RELIEF

* * * * * * *

Subchapter IV—Major Disaster Assistance Programs

* * * * * * *

SEC. 5174a. FLEXIBILITY.

(a) WAIVER AUTHORITY.—

(1) DEFINITION.—In this subsection, the term "covered assistance" means assistance provided—

(A) under section 5174 of this title; and

(B) in relation to a major disaster or emergency declared by the President under section 5170 or 5191, respectively, of this title on or after October 28, 2012.

(2) AUTHORITY.—Notwithstanding section 3716(e) of title 31, the Administrator—

⟦(A) subject to subparagraph (B), may waive a debt owed to the United States related to covered assistance provided to an individual or household if—

⟦(i) the covered assistance was distributed based on an error by the Agency;

⟦(ii) there was no fault on behalf of the debtor; and

⟦(iii) the collection of the debt would be against equity and good conscience; and⟧

(A) except as provided in subparagraph (B), shall—

(i) waive a debt owed to the United States related to covered assistance provided to an individual or household if the covered assistance was distributed based on an error by the Agency and such debt shall be construed as a hardship; and

(ii) waive a debt owed to the United States related to covered assistance provided to an individual or household if such assistance is subject to a claim or legal action, including in accordance with section 317 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5160); and

(B) may not waive a debt under subparagraph (A) if the debt involves fraud, the presentation of a false claim, or misrepresentation by the debtor or any party having an interest in the claim.

(3) MONITORING OF COVERED ASSISTANCE DISTRIBUTED BASED ON ERROR.—

(A) IN GENERAL.—The Inspector General of the Department of Homeland Security shall monitor the distribution of covered assistance to individuals and households to determine the percentage of such assistance distributed based on an error.

(B) ⟦REMOVAL OF⟧ *REPORT ON* WAIVER AUTHORITY BASED ON EXCESSIVE ERROR RATE.—If the Inspector General of the Department of Homeland Security determines, with respect to any 12-month period, that the amount of covered assistance distributed based on an error by the Agency exceeds 4 percent of the total amount of covered assistance distributed—

(i) the Inspector General shall notify the Administrator and publish the determination in the Federal Register; and

(ii) with respect to any major disaster or emergency declared by the President under section 5170 or section 5191, respectively, of this title after the date on which the determination is published under subparagraph (A), [the authority of the Administrator to waive debt under paragraph (2) shall no longer be effective] *the Administrator shall report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate actions that the Administrator will take to reduce the error rate.*

* * * * * * *

○