

PREVENTING DISASTER REVICTIMIZATION ACT

JUNE 14, 2021.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DEFAZIO, from the Committee on Transportation and Infrastructure, 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 Transportation and Infrastructure, to whom 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.

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PURPOSE OF LEGISLATION

The purpose of H.R. 539 is to amend the *Disaster Recovery Reform Act of 2018 (DRRA, Division D of P.L. 115–254)* to require the Administrator of the Federal Emergency Management Agency (FEMA) to waive certain debts owed to the United States related to covered assistance provided to an individual or household.

BACKGROUND AND NEED FOR LEGISLATION

Section 408 of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act, P.L. 93–288, as amended)* authorizes FEMA to provide financial assistance and services to individuals and households who have necessary expenses as a direct result of a major disaster. In some instances, Section 408 assistance is erroneously provided to individuals and households and FEMA must recoup the funds from the recipient. Assistance is often spent by the recipient before an error is discovered, creating a debt to the federal government.

Section 1216(a) of the *DRRA* authorizes FEMA to waive debts owed to the United States related to assistance provided under Section 408 of the *Stafford Act*. Further, *DRRA* Section 1216(a) currently allows FEMA to waive a debt related to covered assistance if the debt was distributed in error by FEMA without fault by the debtor and collection would be “against equity and good conscience.”

H.R. 539 amends *DRRA* Section 1216(a) by directing the Administrator of FEMA to waive debts owed by individuals and households to the United States when: (1) disaster assistance was provided as a result of Agency error (such debt is deemed to be a hardship); or (2) the disaster assistance provided might be subject to a claim or legal action taken by the Agency. The bill also requires FEMA to report to Congress detailing the number of errors the Agency has made in providing assistance to disaster victims and include proposed actions to reduce future errors.

HEARINGS

For the purposes of rule XIII, clause 3(c)(6)(A) of the 117th Congress, the following hearing was used to development or consider H.R. 539:

On March 18, 2021, the Subcommittee held a hearing titled “Building Smarter: The Benefits of Investing in Resilience and Mitigation.” The Subcommittee received testimony from Mr. Russell “Russ” Strickland, Executive Director, Maryland Emergency Management Agency, State of Maryland, *testifying on behalf of the National Emergency Management Association*; Mr. Roy E. Wright, President and Chief Executive Officer, Insurance Institute for Business and Home Safety; Ms. Velma Smith, Senior Government Relations Officer, Flood Prepared Communities Initiative, Pew Charitable Trusts; Mr. Ben Harper, Head of Corporate Sustainability, Zurich North America Insurance Company; and Mr. John “Chuck” Fowke, Chairman, National Association of Home Builders. This hearing examined the current and future capacities in emergency management, mitigation and resilience, insurance, and construction.

In the 116th Congress, the following hearing was used to develop or consider the legislation:

On October 22, 2019, the Subcommittee on Economic Development, Public Buildings, and Emergency Management held a hearing titled “An Assessment of Federal Recovery Efforts from Recent Disasters.” Witnesses included Panel I: Mr. Jeffrey Byard, Associate Administrator, Office of Response and Recovery, Federal Emergency Management Agency; Mr. Dennis Alvord, Deputy Assistant Secretary, Economic Development Administration; Mr. Chris Currie, Director, Homeland Security and Justice, Government Accountability Office. Panel II: Mr. Mike Sprayberry, Director, Emergency Management, North Carolina Department of Public Safety, *testifying on behalf of the National Emergency Management Association*; the Honorable Fernando Gil-Enseñat, Secretary, Commonwealth of Puerto Rico Department of Housing, Ms. Rhonda Wiley, Administrator, Emergency Management and Flood Plains, Atchison County, Missouri; Mr. Reese May, Chief Innovation Officer, SBP. Topics discussed included disaster losses and Federal disaster spending, FEMA workforce readiness, and administration of public assistance in the U.S. and its territories.

LEGISLATIVE HISTORY AND CONSIDERATION

H.R. 539 was introduced in the House on January 28, 2021, by Mr. Graves of Missouri and six original cosponsors. It was referred to the Committee on Transportation and Infrastructure and to the Committee on the Budget. Within the Committee, H.R. 539 was referred to the Subcommittee on Economic Development, Public Buildings, and Emergency Management.

The Subcommittee on Economic Development, Public Buildings, and Emergency Management was discharged from further consideration of H.R. 539 on March 24, 2021.

The Full Committee considered H.R. 539 on March 24, 2021 and ordered the measure to be reported to the House with a favorable recommendation, by voice vote.

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.

No record votes were requested during consideration of H.R. 539.

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. 539 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 14, 2021.

Hon. PETER A. DEFAZIO,
*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. 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 House Committee on Transportation and Infrastructure on March 24, 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 bill 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 bill 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 bill, 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 bill 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 bill 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 HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE ON MARCH 24, 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

The CBO staff contact for this estimate is Jon Sperl. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of 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 prevent undue hardship to disaster victims caused by Agency error or legal action.

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. 539 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.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9 of rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the rule XXI.

FEDERAL MANDATES 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 finds that H.R. 539 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 were created by this legislation.

APPLICABILITY TO 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 THE LEGISLATION

Section 1. Short title

This section provides that this bill may be cited as the “Preventing Disaster Revictimization Act”.

Sec. 2. Flexibility

This section amends section 1216(a) of the *Disaster Recovery Reform Act of 2018* by waiving debts owed to the United States related to covered assistance provided to an individual or household if the assistance was distributed based on an error by FEMA or is subject to a claim or legal action. The section also removes language eliminating the Administrator’s authority to waive debt and replaces it with a requirement to report proposed actions to reduce the error rate to the Committee on Transportation and Infrastructure in the House and the Committee on Homeland Security and Governmental Affairs in the Senate.

Sec. 3. Report to Congress

This section requires FEMA to submit to the Committee on Transportation and Infrastructure in the House and the Committee on Homeland Security and Governmental Affairs in the Senate a report containing a description of the internal processes used to make decisions regarding the distribution of assistance and any change made to such processes.

Sec. 4. Determination of budgetary effects

This section ensures compliance of the bill with the *Statutory Pay-As-You-Go Act of 2010* (Title I of P.L. 111–139).

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 italics, and existing law in which no change is proposed is shown in roman):

DISASTER RECOVERY REFORM ACT OF 2018

* * * * *

DIVISION D—DISASTER RECOVERY REFORM

* * * * *

SEC. 1216. FLEXIBILITY.(a) **WAIVER AUTHORITY.**—

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

(A) under section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174); and

(B) in relation to a major disaster or emergency declared by the President under section 401 or 501, respectively, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170, 5191) on or after October 28, 2012.

(2) **AUTHORITY.**—Notwithstanding section 3716(e) of title 31, United States Code, 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 401 or section 501, respectively, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170; 42 U.S.C. 5191) 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.*

(b) RECOUPMENT OF CERTAIN ASSISTANCE PROHIBITED.—

(1) IN GENERAL.—Notwithstanding section 3716(e) of title 31, United States Code, and unless there is evidence of civil or criminal fraud, the Agency may not take any action to recoup covered assistance from the recipient of such assistance 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.

(2) COVERED ASSISTANCE DEFINED.—In this subsection, the term “covered assistance” means assistance provided—

(A) under section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174); and

- (B) in relation to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170; 42 U.S.C. 5191) on or after January 1, 2012.
- (c) STATUTE OF LIMITATIONS.—
- (1) IN GENERAL.—Section 705 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5205) is amended—
- (A) in subsection (a)(1)—
- (i) by striking “Except” and inserting “Notwithstanding section 3716(e) of title 31, United States Code, and except”; and
- (ii) by striking “report for the disaster or emergency” and inserting “report for project completion as certified by the grantee”; and
- (B) in subsection (b)—
- (i) in paragraph (1) by striking “report for the disaster or emergency” and inserting “report for project completion as certified by the grantee”; and
- (ii) in paragraph (3) by inserting “for project completion as certified by the grantee” after “final expenditure report”.
- (2) APPLICABILITY.—
- (A) IN GENERAL.—With respect to disaster or emergency assistance provided to a State or local government on or after January 1, 2004—
- (i) no administrative action may be taken to recover a payment of such assistance after the date of enactment of this Act if the action is prohibited under section 705(a)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5205(a)(1)), as amended by paragraph (1); and
- (ii) any administrative action to recover a payment of such assistance that is pending on such date of enactment shall be terminated if the action is prohibited under section 705(a)(1) of that Act, as amended by paragraph (1).
- (B) LIMITATION.—This section, including the amendments made by this section, may not be construed to invalidate or otherwise affect any administration action completed before the date of enactment of this Act.

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