

**Written Statement of
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FEMA

**Preventing Improperly Paid Federal
Assistance in the Aftermath of Disasters**

Before the

**U.S. Senate Homeland Security and
Governmental Affairs Committee**

**Ad Hoc Subcommittee on Disaster Recovery and
Intergovernmental Affairs**

Washington, DC

March 17, 2011

I. Introduction

Good morning Chairman Pryor, Ranking Member Ensign, and distinguished Members of the Subcommittee. My name is Elizabeth Zimmerman, and I am the Deputy Associate Administrator of the Office of Response and Recovery at the Federal Emergency Management Agency (FEMA). It is an honor to appear before you today on behalf of FEMA to discuss our process for recouping improperly awarded disaster assistance payments.

The recoupment process is a challenging, yet necessary part of FEMA's responsibility to protect taxpayer funds. Because of the unpredictable and exigent nature of emergency management, our success as an Agency requires that we provide fast and effective service to individuals and families in need. However, FEMA must also demonstrate responsible stewardship over taxpayer dollars as we fulfill our legal responsibility to recover improperly disbursed funds.

In my testimony today, I will provide an overview of the procedures FEMA uses to recover federal disaster assistance overpayments, including changes we have made to both the recoupment process and to the initial disaster assistance application process. By implementing necessary reforms to the disaster assistance application process, we have minimized the error rate for overpayments and reduced the opportunity for waste, fraud and abuse. Moreover, our new recoupment process improves our communication with applicants and ensures that they are afforded adequate due process. In fact, as a result of the measures we put in place, we have drastically reduced the error rates for the amount of funds that were improperly disbursed, from 14.5 percent after Hurricane Katrina to less than 3 percent in FY 2009. These efforts are an essential part of demonstrating responsible stewardship over taxpayer resources, while remaining mindful of the impact this process can have on the delivery of disaster assistance and the affected individuals and families.

FEMA also continues to fight waste, fraud and abuse of disaster assistance funding with preventive measures and investigative tools. If a potential recoupment case shows evidence of waste, fraud or abuse, FEMA's Fraud Prevention Unit investigates and, where appropriate, refers cases to the DHS Office of the Inspector General (OIG) for a criminal review. As a result of these and other efforts to address fraudulent activity, as of December 31, 2010, FEMA has collected \$3,110,831.76 in restitution payments from individuals found guilty of fraudulent activity from Hurricanes Katrina and Rita. FEMA will continue to aggressively take measures to prevent, detect and punish fraud related to disaster assistance as part of our efforts to protect taxpayer funds.

II. A Background on Recoupment

Following a Presidentially-declared disaster, FEMA provides temporary housing, crisis counseling, legal services, unemployment assistance, and other assistance to individuals and families in need through its Individual Assistance program. FEMA's highest priority in the immediate aftermath of a disaster is helping the people who need it most, and providing assistance as quickly as possible. However, FEMA must balance the requirement to quickly distribute funds to meet the needs of disaster survivors with its responsibility to be good stewards of taxpayer funds.

After every disaster, FEMA audits disaster assistance payments to ensure taxpayer dollars were properly spent. Those audits often show a small percentage of cases where disaster assistance was provided to people who were not eligible for some or all of the money they received. Additionally, a subsequent examination of documentation in a file or a physical examination of a home may indicate that an applicant was not entitled to receive payment. As a result, an applicant may be deemed ineligible for all or part of the disaster assistance received, and thus, subject to recoupment.

A variety of federal laws, regulations and Executive Branch directives require FEMA to identify, reduce and recover improper disaster assistance payments. The Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 STAT. 1321-374 (April 26, 1996), requires that federal agencies “shall try to collect a claim of the United States Government for money or property arising out of the activities of, or referred to, the agency.” Moreover, the Improper Payments Elimination and Recovery Act of 2010, Pub. L. No. 111-204, 124 Stat. 2224 (July 22, 2010), requires that agencies “periodically review all programs and activities . . . and identify all programs and activities that may be susceptible to significant improper payments.” DHS regulations, at 6 CFR Part 11, also set forth general procedures for administrative collection of debts.

At the time that Hurricane Katrina was declared a catastrophic disaster, FEMA recouped improper disaster assistance payments pursuant to FEMA regulations at 44 CFR Part 11, subpart C, which provided no opportunity for an oral hearing as part of an appeal. However, in April 2007, a group of disaster assistance applicants from Hurricanes Katrina and Rita filed a class action lawsuit alleging that FEMA violated the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the Administrative Procedure Act, and the Due Process Clause of the U.S. Constitution in its disbursement of housing assistance and recoupment procedures. With respect to recoupment in particular, the plaintiffs claimed that FEMA’s procedures for recovering overpayments were based on vague and unpublished standards, lacked adequate explanations for why there was an overpayment, did not provide notification of the opportunity for compromise based on hardship, and failed to provide a meaningful hearing for those who wished to appeal FEMA’s determination. On June 13, 2007, a federal district court judge issued a preliminary injunction enjoining FEMA from continuing its recoupment process for Individual Assistance overpayments. Ridgely v. FEMA, 2007 U.S. Dist. LEXIS 43009 (E.D. La. June 13, 2007).

Also in early 2007, DHS unified Departmental debt collection regulations at 6 CFR Part 11 by adopting the Federal Claims Collection Standards (31 CFR Parts 901-904). These standards require (among other things) that absent specific agency regulations providing for an exception, individuals identified for recoupment be provided an opportunity for an oral hearing when the question of indebtedness cannot be established with documentary evidence alone.

As a result of both the lawsuit and the 2007 DHS regulations, FEMA decided to overhaul its recoupment procedures. On September 5, 2008, FEMA published a notice in the Federal Register terminating its former procedures governing recoupment and withdrawing all recoupment notices sent to disaster applicants in connection with Hurricanes Katrina and Rita. 73 Fed. Reg. 51831-51832 (September 5, 2008). FEMA specifically explained that its notice “[did] not cancel valid debts of the disaster applicants from Hurricanes Katrina and Rita; it terminat[ed]

the former procedures under which FEMA recouped such debts.” In the Federal Register notice, FEMA explained its plans moving forward as follows: “FEMA will reexamine *de novo* the files of individual disaster applicants for evidence of overpayment. In instances where FEMA determines that recoupment is still warranted based on such review, FEMA will institute new recoupment proceedings pursuant to the procedures set forth at 6 CFR part 11 (adopting general procedures for administrative collection of debts set forth at 31 CFR parts 900-904), and will transmit new recoupment notices explaining the rights and obligations of persons who are determined to have received overpayments.”

As a result of this action, on August 24, 2009, the district court in Ridgely dissolved the preliminary injunction and dismissed the recoupment claims. Ridgely v. FEMA, No. 07-2146 (E.D. La. August 24, 2009).

In the Federal Register notice, FEMA gave individuals who had already entered into payment plans the option of continuing to make payments or stopping their payments. 73 Fed. Reg. 51831-51832 (September 5, 2008). Many individuals continued making their payments. As of December 31, 2010, FEMA has collected \$47,149,091 in repayments from 17,792 debtors in repayments from disaster applicants affected by Hurricanes Katrina and Rita. Debtors from these two hurricanes continue to average debt repayment of \$64,756 per month. The debt principal is returned to FEMA’s Disaster Relief Fund.

III. Implementing Changes to the Recoupment Process

Since the 2007 lawsuit, the promulgation of DHS-wide recoupment regulations, and FEMA’s subsequent 2008 Federal Register notice, FEMA has made significant changes to the recoupment process and is getting ready to begin a new recoupment effort that will increase fairness and transparency for both disaster survivors and taxpayers. The new recoupment process includes changes to ensure applicants are afforded adequate due process and better communication with FEMA, consistent with the Debt Collection Act and DHS-wide regulations. If an applicant files an appeal regarding the notice of debt, he or she will now have the ability to request an oral hearing if the indebtedness cannot be resolved by FEMA’s review of the documentary evidence alone. FEMA has also redesigned its recoupment procedures to improve the written notification informing applicants of their potential debt to the government.

FEMA's recoupment process also allows individuals who cannot afford to repay their debt in one installment to work out a payment plan based on their relevant financial circumstances. In addition, individuals are provided the opportunity to request a compromise or waiver for all or part of their debt, based on financial inability to pay, or other special circumstances.

When an individual is identified as a recipient of an improper disaster assistance payment, FEMA’s National Processing Service Center (NPSC) will send that individual a “Notice of Debt” letter. The letter, written in plain, easy to understand terms, outlines how much money is owed to the government along with the reason why the funds are being recouped. The Notice of Debt letter is a bill, and the specified amount of money is due to FEMA within 30 days. After 30 days, FEMA will begin charging interest on the debt at the interest rate set by law.

However, when an individual receives the Notice of Debt letter, he or she has several options, which include:

- Paying the amount in full;
- Requesting a payment plan or a compromise of the debt if a compromise is authorized by law; or
- Filing an appeal within 60 days.

FEMA is mindful of the difficulties that the recoupment process might pose for individuals who may have received improper payments or overpayments. Simply put, if someone cannot pay the full amount, FEMA will work with him or her to set up a repayment plan. However, the onus is on the individual to call FEMA's toll free recoupment helpline and provide some basic personal information, including his or her FEMA application number or social security number. A member of our team will then mail a Request for Information packet to the individual, and ask that it be completed and returned within 30 days for evaluation.

Federal regulations also provide that an individual may request a compromise of the debt based on inability to pay (if the debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information).

Finally, an individual has the right to file an appeal within 60 days of receiving the Notice of Debt letter. These revamped appeal procedures are at the heart of the Agency's efforts to provide disaster assistance applicants with a process that is fair and easy to understand.

To file an appeal, individuals must provide the Agency with both a letter indicating why they do not believe they owe the debt, and copies of any documents or statements which help to support their appeal.

Most importantly, under the new recoupment proceedings, applicants wishing to appeal a recoupment decision may request an oral hearing. Such requests will be granted when an appeal cannot be resolved by reviewing documentary evidence alone. The oral hearing may be conducted by telephone, or under certain circumstances, in person at a FEMA office. Oral hearings are conducted and decisions are rendered by an oral hearing officer with FEMA's Alternative Dispute Resolution Division.

Regulations require FEMA to decide appeals and issue final decisions in writing within 90 days after receipt of the original appeals letter. However, if an applicant is provided an oral hearing as part of his or her appeal process, the timelines associated will vary due to the logistics of coordinating the hearing.

FEMA is committed to working with all individuals identified for recoupment to ensure that they have a complete understanding of the determination made and the various options available to them to resolve their debt.

It was critical to our leadership that we move forward with a new recoupment process, but that we take the time to do it right. As part of this effort, FEMA has been reviewing the cases of approximately 168,000 applicants that may have received improper disaster assistance payments

through the Individuals and Households Program (IHP). These cases arise from Hurricanes Katrina and Rita, as well as other disasters that followed. This review is being conducted to verify and ensure that the cases are appropriate for recoupment. This verification process will likely reduce the number of cases that require FEMA send a notice of debt and, therefore, not all of the 168,000 potential cases will result in a recoupment.

Earlier this week, FEMA published a Federal Register notice announcing its intent to proceed with recoupment and outlining the revised recoupment process. In fulfilling its statutory requirement as a steward of federal taxpayer funds, this week, FEMA began mailing Notice of Debt letters where FEMA believes erroneous payments have been made.

IV. Fighting Waste, Fraud and Abuse of Disaster Assistance Payments

Even while we worked to establish a new and improved recoupment process, FEMA continued efforts to collect any improper payments that we believe were the result of fraudulent activity. We work closely with our partners at the federal, state and local levels to help deter, prevent, investigate and prosecute claims of waste, fraud and abuse related to disaster assistance. While the vast majority of disaster assistance applicants have a legitimate need for the assistance they seek, there are always individuals who falsely claim those benefits for their own personal gain, often at the expense of the needs and well-being of disaster survivors. For that reason, we have put systems in place to combat fraudulent schemes by preventing fraud from occurring in the first place, and aggressively investigating and prosecuting allegations of fraud.

FEMA has initiated a FEMA-wide fraud awareness, prevention and detection training program to help strengthen controls in compliance with the Stafford Act, and to further prevent waste, fraud and abuse. We have conducted training sessions for not only FEMA employees, but also for other federal agencies, state partners, and several non-governmental organizations.

Since its inception in 2006 through the end of 2010, FEMA's Fraud Prevention Unit has investigated nearly 3,200 disaster fraud complaints and referred more than 2,400 fraud cases to the OIG for criminal investigative review and/or referral for prosecution by the Department of Justice. The FEMA Fraud Prevention Unit has also prevented \$5.5 million in disaster payments from being improperly disbursed.

FEMA continues to aggressively make improvements that will allow us to more easily detect fraudulent activity. FEMA launched a pilot program that uses new technology to identify anomalies in FEMA's disaster applicant database. Any unusual activity, from an inappropriate change in an applicant's bank account number to improper attempts to gain access to secure databases, will be identified in real time. The system is integrated with FEMA's existing IT structure and uses filters and algorithms to search for unusual activities. The program also serves as a risk mapping tool that can help detect current and anticipated disaster fraud schemes, and supports collecting and tracking investigative activities and analysis involving disaster fraud.

As we continue to make improvements that help us fight waste, fraud and abuse, we take pride in our success to date. A June 2009 Government Accountability Office (GAO) report noted

improvements to FEMA’s disaster assistance process based on Hurricanes Gustav and Ike. The report stated, “[s]ince Hurricanes Katrina and Rita, FEMA has improved its controls over identity and address verification and inspections, housing assistance in FEMA-paid hotels, and duplicate registrations. Improvements in these three key areas have reduced FEMA’s risk of making payments based on fraudulent disaster assistance registrations.”¹

V. Reforming the Disaster Assistance Application Process

FEMA must also implement measures to minimize and eliminate improper disaster assistance payments in the first place. To that end, FEMA has worked diligently to put protections in place to safeguard against waste, fraud and abuse in disaster situations. These efforts have significantly reduced the percentage of improper payments, while ensuring that eligible individuals and families are able to receive needed assistance as quickly as possible.

FEMA has increased the prevention of improper payments by making changes to the disaster application processing at our National Processing Service Centers (NPSCs) through several actions:

- FEMA now uses a commercial data service provider to instantly verify the identity of an individual applying for federal disaster assistance by cross-checking name, address, social security number, and date of birth;
- Applicants are sent a hard copy of their applications so they have an opportunity to review their files and address any errors;
- Possible “high risk” addresses such as check cashing stores, mail drops, cemeteries, and jails, are blocked from receiving automated payments;
- If an applicant does not pass the identity verification, he or she will receive an ineligible decision notification explaining the situation and what documentation he or she should provide in order to overturn the decision;
- Duplicative rental assistance payments for overlapping months, and payments over the IHP maximum, are blocked;
- Duplicative applications submitted through the Internet registration process are also blocked to prevent duplicate payments to the same applicant;
- National Emergency Management Information System (NEMIS) business rules have been improved to flag payments to applicants at the same address for manual review, to eliminate duplicate payments; and
- A NEMIS direct assistance module is in place to track individuals provided with mobile homes or travel trailers, and block the provision of financial rental assistance to applicants already in federally supplied disaster housing.

FEMA has also engaged in several other fraud and error prevention efforts, including:

¹ GAO-09-671.

- FEMA established the IHP Assistance Group in 2008 to provide clear, consistent and timely guidance regarding IHP policies and case processing procedures to reduce case processing errors and improve operational efficiency and overall delivery of service;
- The NPSCs updated their IHP credentialing training curriculum to include changes in IHP policy and case processing procedures. In 2009, all NPSC staff involved in manual case processing received re-credentialing training;
- FEMA’s Quality Control group expanded to include reviews of special projects and new case processing procedures. This initiative has enabled the NPSCs to rapidly identify problems with projects and new processing guidelines, and to take remedial actions as necessary;
- The NPSCs established specialized teams of employees dedicated to the processing of some of the more complex cases, such as Appeals and Recoupments; and
- The NPSCs established an Audit Group responsible for performing internal audits and analysis on the efficiency and effectiveness of the manner in which IHP is administered by the NPSC enterprise.

Recent reports and statistics indicate that our efforts to minimize improper disaster assistance payments have been successful. A September 2009 OIG report stated that “FEMA has increased the number and scope of protective measures taken to ensure that registrations based on duplicate and invalid information do not become eligible for assistance payments.”² The report also noted “substantial improvements in internal controls, resulting in far fewer instances of payments being made to registrations with duplicate and invalid key data.”³

V. Conclusion

FEMA understands the necessity of being responsible stewards of taxpayer dollars. For that reason, we have implemented measures to minimize error rates and overpayments, and ensure disaster assistance is given expeditiously only to those who truly need it. These front-end controls help deter overpayments resulting from both honest misunderstandings of disaster assistance eligibility, as well as attempts to improperly acquire government funds through fraudulent activity.

We have also put the necessary steps in place to allow ourselves to best fulfill our legal obligation to recoup improperly disbursed funds in a transparent manner. Because of the changes we have implemented to both the application process and the recoupment process, we are now able to minimize the need for recoupment in the first place, and ensure that we have a smooth and transparent process to recoup funds, where necessary. Our efforts to resolve improper payments must continue to be balanced with the flexibility to swiftly provide disaster assistance to survivors in times of immediate need.

Thank you again for the opportunity to appear before you today. I am happy to answer any questions the Subcommittee may have.

² OIG-09-110.

³ OIG-09-110.