

DISASTER ASSISTANCE FAIRNESS AND ACCOUNTABILITY  
ACT OF 2017

NOVEMBER 21, 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

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 3176) to prohibit the Federal Emergency Management Agency from recouping certain assistance, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:  
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Disaster Assistance Fairness and Accountability Act of 2017”.

**SEC. 2. RECOUPMENT OF CERTAIN ASSISTANCE PROHIBITED.**

(a) **IN GENERAL.**—Notwithstanding section 3716(e) of title 31, United States Code, and unless there is evidence of civil or criminal fraud, the Federal Emergency Management 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 Federal Emergency Management Agency first provides to the recipient written notification of an intent to recoup.

(b) **COVERED ASSISTANCE DEFINED.**—In this section, the term “covered assistance” means assistance provided—

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

(2) in relation to a major disaster declared by the President under section 401 of such Act (42 U.S.C. 5170) on or after January 1, 2012.

**PURPOSE OF LEGISLATION**

H.R. 3176, as amended, prohibits the Federal Emergency Management Agency (FEMA) from recouping certain assistance granted to individuals.

**BACKGROUND AND NEED FOR LEGISLATION**

*Federal Emergency Management Agency: History*

FEMA was established in 1979 by Executive Order 12148 by President Jimmy Carter in response to a number of massive disasters in the 1960’s and 1970’s. As a result of individual 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 (Public Law 93–288), which constituted the statutory authority for most federal disaster response activities, especially of FEMA, was later amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, also known as the Stafford Act (Public Law 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, dispersing FEMA’s functions among various offices and directorates within the Department. 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) (Public Law 109–295), which addresses key response roles and authorities and reconstituted FEMA within DHS.

*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 pro-

vides direct support and financial assistance to states and local governments and individuals as authorized under the Stafford Act.

*Disaster Assistance Fairness and Accountability Act of 2017*

In the wake of a Presidential major disaster declaration, FEMA may provide financial assistance to individuals who have necessary expenses and serious needs they are unable to meet by other means through the Individual and Households Program. While FEMA has implemented controls to avoid improper payments, errors are made. FEMA's current error rate for improper payments to individuals is less than two percent. H.R. 3176, as amended, institutes a three-year statute of limitations, which will prohibit FEMA from recouping assistance three years after it was received when there is no evidence of fraud. This will help ensure that any collection actions are initiated as quickly as possible.

HEARINGS AND ROUNDTABLES

The Subcommittee on Economic Development, Public Buildings, and Emergency Management held the following hearings and roundtable discussions on subjects related to matters contained in H.R. 3176, as amended, during the 114th and 115th Congresses:

*"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 explore potential solutions and the principles that should be driving solutions to lower the overall costs of disasters and to help avoid devastating losses.

*"Building a 21st Century Infrastructure for America: Mitigating Damage and Recovering Quickly from Disasters"* held on April 27, 2017. The purpose of the hearing is to examine how to protect infrastructure against future disaster damage, how to lower overall disaster costs, and to identify challenges facing

FEMA in responding to, recovering from, and mitigating against disasters, both natural and manmade.

#### LEGISLATIVE HISTORY AND CONSIDERATION

On July 11, 2017, Representative MacArthur (R-NJ) introduced H.R. 3176, a bill that prohibits FEMA from recouping assistance from individual applicants three years after the assistance was provided.

On July 27, 2017, the Committee on Transportation and Infrastructure met in open session to consider H.R. 3176. The Committee considered an amendment offered by Congressman Lou Barletta (R-PA) which was adopted by voice vote. The Committee ordered the bill, as amended, 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. 3176, as amended, or ordering the measure reported. A motion to order H.R. 3176, as amended, 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. 3176, as amended, from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, October 12, 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. 3176, the Disaster Assistance Fairness and Accountability Act of 2017.

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,  
*Director.*

Enclosure.

*H.R. 3176—Disaster Assistance Fairness and Accountability Act of 2017*

Summary: H.R. 3176 would establish a three-year statute of limitations on actions to recover certain improper assistance grants that the Federal Emergency Management Agency (FEMA) provided to individuals following a declared disaster. Under current law, FEMA has the authority to recover disaster assistance grants at any time after the date of disbursement.

CBO estimates that H.R. 3176 would reduce FEMA's recoupments of improper payments, which are recorded as reductions in direct spending, by \$30 million over the 2018–2027 period. However, under current law, those amounts would be available for future disaster relief payments without further appropriation; thus, enacting the bill also would reduce direct spending by an equivalent amount, resulting in no net effect on direct spending over the next 10 years. Because fewer collections would be available to finance future disaster relief payments under the bill, H.R. 3176 would create a need for additional appropriations for those purposes. Assuming appropriation of the necessary amounts, CBO estimates that implementing the bill would cost \$30 million over the 2018–2027 period.

Because enacting the bill would affect direct spending, pay-as-you-go procedures apply. Enacting the bill would not affect revenues. CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 3176 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 3176 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

|                                                | By fiscal year, in millions of dollars— |      |      |      |      |      |      |      |      |      |               |               |
|------------------------------------------------|-----------------------------------------|------|------|------|------|------|------|------|------|------|---------------|---------------|
|                                                | 2018                                    | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2018–<br>2022 | 2018–<br>2027 |
| INCREASES OR DECREASES (–) IN DIRECT SPENDING  |                                         |      |      |      |      |      |      |      |      |      |               |               |
| Forgone Recoveries of Improper Payments:       |                                         |      |      |      |      |      |      |      |      |      |               |               |
| Estimated Budget Authority .....               | 10                                      | 7    | 5    | 4    | 4    | 0    | 0    | 0    | 0    | 0    | 30            | 30            |
| Estimated Outlays .....                        | 10                                      | 7    | 5    | 4    | 4    | 0    | 0    | 0    | 0    | 0    | 30            | 30            |
| Reduced Spending from Recoveries:              |                                         |      |      |      |      |      |      |      |      |      |               |               |
| Estimated Budget Authority .....               | –10                                     | –7   | –5   | –4   | –4   | 0    | 0    | 0    | 0    | 0    | –30           | –30           |
| Estimated Outlays .....                        | –6                                      | –7   | –6   | –4   | –4   | –2   | –1   | 0    | 0    | 0    | –27           | –30           |
| Net Change:                                    |                                         |      |      |      |      |      |      |      |      |      |               |               |
| Estimated Budget Authority .....               | 0                                       | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0             | 0             |
| Estimated Outlays .....                        | 4                                       | 0    | –1   | 0    | 0    | –2   | –1   | 0    | 0    | 0    | 3             | 0             |
| INCREASES IN SPENDING SUBJECT TO APPROPRIATION |                                         |      |      |      |      |      |      |      |      |      |               |               |
| Estimated Authorization Level .....            | 10                                      | 7    | 5    | 4    | 4    | 0    | 0    | 0    | 0    | 0    | 30            | 30            |
| Estimated Outlays .....                        | 6                                       | 7    | 6    | 4    | 4    | 2    | 1    | 0    | 0    | 0    | 27            | 30            |

Basis of estimate: For this estimate, CBO assumes that H.R. 3176 will be enacted near the end of 2017 and that the estimated amounts will be appropriated each year. Estimated outlays are based on historical spending patterns for the affected programs.

#### *Direct spending*

Under current law, FEMA is required to recoup improper payments made during the course of providing disaster assistance. Improper payments can result from, among other things, duplication of benefits (for example, receipt of two insurance payments for the same damage), processing errors, or fraud. When notified by FEMA, recipients of improper payments must repay those amounts in full, set up a payment plan, or request that FEMA waive all or part of the repayment based on the recipient's ability to pay. If payment is not received, the Department of the Treasury assumes responsibility for collecting the debt (along with any applicable interest and fee charges) through federal and state payment deductions, administrative wage garnishment, or referral to a private collection agency. All payments received through the recoupment process are deposited in FEMA's Disaster Relief Fund (DRF) and are available to spend for future disasters without further appropriation.

Under H.R. 3176, improper payments made to individuals would have to be recouped within three years of their disbursement. That limitation would not apply where there is evidence of fraud.

According to data from a report by the Governmental Accountability Office, about three percent of the approximately \$1.6 billion in FEMA individual assistance payments disbursed between 2012 and 2014 for Hurricane Sandy relief were improper or fraudulent. Based on a review of that report, CBO judges that few of those payments (less than 5 percent) were the result of fraudulent requests. Based on information from FEMA about the recoupment rate for improper payments after previous major disasters, CBO expects that about 25 percent of those payments have already been recouped. Thus, CBO estimates that \$30 million in improper payments for individual assistance that are in the process of being re-

couped would no longer be collected under H.R. 3176. However, because those amounts would have been available to FEMA for future disaster relief payments without further appropriation, fewer collections also would reduce outlays, resulting in no net effect on direct spending over the 2018–2027 period.

*Spending subject to appropriation*

CBO estimates that barring FEMA from recouping certain improper payments would reduce amounts deposited in the DRF by \$30 million over the next five years. Assuming disaster relief payments stay at the same level, appropriations would need to increase; such spending would total \$30 million over the 2018–2027 period, CBO estimates.

**Pay-As-You-Go considerations:** 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 pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 3176, THE DISASTER ASSISTANCE FAIRNESS AND ACCOUNTABILITY ACT OF 2017, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE ON JULY 27, 2017

|                                             | By fiscal year, in millions of dollars— |      |      |      |      |      |      |      |      |      |           |           |
|---------------------------------------------|-----------------------------------------|------|------|------|------|------|------|------|------|------|-----------|-----------|
|                                             | 2018                                    | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2018–2022 | 2018–2027 |
| NET INCREASE OR DECREASE (–) IN THE DEFICIT |                                         |      |      |      |      |      |      |      |      |      |           |           |
| Statutory Pay-As-You-Go Impact              | 4                                       | 0    | –1   | 0    | 0    | –2   | –1   | 0    | 0    | 0    | 3         | 0         |

**Increase in long-term direct spending and deficits:** CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

**Intergovernmental and private-sector impact:** H.R. 3176 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Costs: Robert Reese; Impact on State, Local, and Tribal Governments: Rachel Austin; Impact on the Private Sector: Logan Smith.

Estimate 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 implement a three-year statute of limitations on FEMA’s ability to recoup disaster assistance funds from individuals in the absence of fraud.

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, as amended, 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. 3176, as amended, 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. 3176, as amended, 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. 3176, as amended, 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. Short title*

This section designates the short title as the “Disaster Assistance Fairness and Accountability Act of 2017.”

##### *Section 2. Recoupment of certain assistance prohibited*

This section provides that the Administrator shall not recover disaster assistance funds more than three years after they are received, absent fraud.

Section two also defines the assistance covered under the act as “assistance provided (1) under section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174); and (2) in relation to a major disaster declared by the President. . . .”

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 3176, as amended, makes no changes in existing law.

