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PREVENTING IMPROPERLY PAID FEDERAL ASSISTANCE IN THE AFTERMATH OF DISASTERS

HEARING

BEFORE THE

AD HOC SUBCOMMITTEE ON DISASTER RECOVERY AND INTERGOVERNMENTAL AFFAIRS

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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THURSDAY, MARCH 17, 2011

U.S. SENATE,
AD HOC SUBCOMMITTEE ON DISASTER RECOVERY
AND INTERGOVERNMENTAL AFFAIRS,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:06 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Mark L. Pryor, Chairman of the Subcommittee, presiding.

Present: Senators Pryor and Landrieu.

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. All right. I will go ahead and call us into order.

I want to thank our witnesses for coming today. We are going to have two panels.

I also want to start by acknowledging the ongoing fight to save lives in the wake of one of the deadliest natural disasters in modern times. I know all of my colleagues are lifting up the people of Japan in their prayers and their thoughts, and we are trying to find ways to help them. There are millions of Japanese who have been impacted by this, and of course we are watching every day. It seems like every time you turn on the TV or hear the news it is getting a little bit worse. Certainly with these nuclear reactors, problems we will be watching very closely.

I am very proud of the American military, and our search and rescue folks, and the various other experts that we have been sending over there to try to help them in their time of need.

I want to welcome our witnesses from the Federal Emergency Management Agency (FEMA) and the Small Business Administration (SBA) and the Inspector General's (IGs) offices of both agencies, as well as all of my colleagues and the visitors who have joined us, for the first hearing of the Subcommittee on Disaster Recovery and Intergovernmental Affairs.

A recently released report from the United Nations showed that 2010 was one of the worst years on record for natural disasters and that we are in a period of unusually frequent disasters. As the U.S. Government prepares to meet the challenges that are sure to come, we must ensure that our response and recovery mechanisms are

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strong enough to handle catastrophes ranging from a hurricane in the Gulf of Mexico to an earthquake in Arkansas.

Today, we will discuss ways to prevent the Federal Government from making improper payments in the wake of these disasters. The Government Accountability Office (GAO) has determined that improper payments by government agencies have risen from an estimated $20 billion at the turn of the century, to $125 billion in 2010. As we prepare our government to more effectively manage the increased numbers of disasters, it is absolutely critical that we also work to ensure that Federal Government resources are distributed more efficiently in the aftermath.

Federal agencies provide many types of disaster assistance to survivors, and there are many government agencies involved. One thing I want to emphasize is that we are not out to vilify the disaster victims or to subject those who have already suffered harsh tragedies and debt collection efforts and financial ruin, et cetera. We are not out to say that they are at fault.

I know that everyone makes errors in the process, and we are trying to find those errors and fix the inefficiencies by the Federal agencies. Our focus is not on the victims, on the citizens of the United States, but really on the Federal agencies to make sure we have our act together and we have the right systems in place.

So we will look at these systems, and we will certainly look at the Office of Inspector General (OIG) recommendations for ensuring that it does not happen again.

FEMA announced some improvements to its recoupment programs over the past few days, and I would like to ask them a number of questions about that. FEMA is not the only Federal agency involved in disaster assistance. Department of Housing and Urban Development (HUD), delivers disaster Community Development Block Grants (CDBG) funds to impacted communities and directly to individuals, and also administers the Disaster Housing Assistance Program (DHAP) through an interagency agreement with FEMA.

HUD's role in disasters has increased dramatically over the past two decades. More than $30 billion in HUD's CDBG program has been used since 1992 to provide flexible Federal funds to support States and local governments during these long-term recoveries. Unfortunately, HUD is not able to be here today, and we will be working with them and following up with them separately to make sure that we understand what they are doing, where they are going and how things are going there.

Of course, in addition to FEMA and HUD, the SBA plays a very important role in disaster assistance through the Disaster Loan Program. We intend to ask them today how many of these loans end up in default and inquire as to how the agency goes about collecting the debt. We will also ask the SBA OIG what recommendations it can make to FEMA about improving the recoupment capacity because SBA, by virtue of dealing with loans, is better equipped than FEMA to recoup the money.

With that, I would like to turn it over to my esteemed colleague from Louisiana and have her opening statement.

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OPENING STATEMENT OF SENATOR LANDRIEU

Senator LANDRIEU. Thank you, Chairman Pryor, and I really appreciate your focus on this important issue.

I do think that we have to take seriously our responsibility to curb government waste where we find it, and to eliminate and prosecute fraud and abuse. We must do this to restore public confidence, to reduce the Federal deficit and to rein in the national debt. Recoupment of improper payments is an important part of that effort.

But it is important, however, and that is why I really wanted to be here this morning, to say that we not rush to judgment to—and this is not you at all, but I hear others sometimes trying to score political points—where this issue is involved when it comes to citizens who have experienced tragedy and loss as a result of disasters.

Where fraud has been committed we will, and should, target and prosecute it. I co-sponsored the Emergency and Disaster Assistance Fraud Penalty Enhancement Act with Senator Sessions. I am sure you remember that bill, Chairman Pryor, which was signed into law in 2007, and significantly increased prison sentences and fines for people convicted of fraudulently obtaining Federal disaster assistance.

The Justice Department (DOJ), I understand, has established a Hurricane Fraud Task Force to investigate and prosecute fraud cases and has secured numerous convictions—I would like to hear more about that—under these new sentencing guidelines.

But there is a dangerous tendency among some lawmakers, and I want to specifically say this Chairman excluded, and some members of the press to assume that improper payment is the same thing as fraud. Neither FEMA nor the Inspector General has been able to provide me—maybe they have some information today, but up until today—with an estimate of how many of these 160,000 cases truly represent fraud.

We do know that thousands of payments described as improper by the Department of Homeland Security Inspector General (DHS OIG) went to people who were seriously affected by this disaster and used these moneys for urgent and legitimate needs. For example, in order to provide a fuller picture, let me say these are just some examples of what would be categorized as potential fraud or "improper payments":

People who lost title to their home or insurance documents during the flooding. Let me be very clear. After Hurricane Katrina, when the levees broke that should not have broken and breached in I think over 52 places, thousands of homes were destroyed within hours. People did not have time to grab copies of their titles or insurance documents.

Why those titles and insurance documents could not be provided by any agency of the government is still a source of great concern.

Why tax forms could not be provided by the IRS and my citizens had to be berated time after time for not being able to produce copies of their tax records is still beyond my comprehension.

But they lost those materials. They now may be challenged because they could not provide them.

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Other people could not provide a free and clear title because their home has been in families for generations. I would like to remind people that some people paid off their mortgages decades ago. We also have households that split up after disasters due to space constraints and other reasons. Maybe one part of the extended family went to Atlanta, one part of the family went to L.A. and one part of the family went to Milwaukee, Wisconsin. They may now be accused of accepting duplicate payments.

People who own second homes where their children or parents live separately from them. Their assistance may have been classified as improper payments.

People who use funds to pay for childcare expenses. There were no schools open. There were no daycare centers open in St. Bernard Parish and hardly any in the city of New Orleans. I want people to remember that.

People sometimes are targeted because of data entries and errors by FEMA employees, including bank account numbers, addresses and social security numbers. And Mr. Chairman, these could be termed improper payments.

People being targeted because of mix-up or emissions of suffixes like junior or senior, or street suffixes like boulevard, drive or highway. Sometimes those are classified as improper or not in order.

People who received rental payments in excess of HUD's fair market value in the area, even if they spent all of their funds on rental expenses, which, you will go back and look, spiked significantly upwards of 40 percent in some areas because the supply was so reduced that prices went up.

And I could go on and on.

So my point is absolutely where we find fraud, Mr. Chairman—and you, as a former prosecutor, most certainly have an extraordinary record in this regard—we want to prosecute fraud. But we want to be careful as we are examining these things that it is really fraud that we are after and not honest disaster victims who made reasonable good-faith decisions in the aftermath of a storm.

It is noteworthy that many of my constituents reported overpayments themselves. Eighteen million dollars, I understand, of insurance funds in question were reported to FEMA by disaster survivors themselves. So from Hurricanes Katrina, Rita, Gustav and Ike and maybe others, they in fact reported themselves that they were overpaid because these are, for the most part, honest, hard-working citizens that were in a very desperate situation.

Second, I want to remind this Subcommittee and all observing that the reason that we are into this mess in the first place is because the Republican leadership, in my view, undercut funds to FEMA. That agency that showed up when Hurricane Katrina happened was a shell of itself because of year after year of budget cuts and ignoring the importance of investing in response. So there were no computer systems that were efficient and effective, information technology (IT) was insufficient and payments went out without the necessary safeguards in place.

I understand that, but I am wondering: Is that the fault of the disaster victims who received the assistance or the Federal Government for not having its systems in order?

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That is an important question because what I see, what is alarming to me, and I am going to stop in a minute, Mr. Chairman—you have been very gracious—is that the Republican leadership in the House is getting ready to do the same thing as we speak through the CR, cutting FEMA funding and investments in IT underfunding the Disaster Relief Fund, to set up again what looks to me like a repeat of the past. I am going to do everything I can to make sure that does not happen.

I will submit the rest of my statement for the record.

And Mr. Chairman, you have been a great advocate for us.

And I just want to make sure that people realize the Disaster Relief Fund currently has a shortfall of $1.565 billion. The fund will be exhausted in June. I have written to the President. I have asked him to send to Congress an emergency supplemental funding request. He has not done so to date.

And the House Republican leadership wants to basically take the money that is in Homeland Security that you and I fought for, Mr. Chairman, that prepares for future disasters, to pay for the past disasters. This is not going to work, and what is going to happen is something is going to fall between the cracks.

So I am not going to stand by and let honest people in Arkansas, Tennessee, or Louisiana be prosecuted for fraud when our Federal Government will not do its job to get the systems funded and sufficient and up and running.

So I thank you for letting me come. I have to go to the floor. But please keep me posted, and I look forward to helping you in any way to ferret out the fraud but to be careful in the way we do it and to make sure that when we are doing it the taxpayers actually save money rather than wasting it in the process.

Many of these payments were $2,000 or $1,000. So to spend millions of dollars trying to find and run down $1,000 here and $2,000 there, I am not sure how cost effective that will be, but we should measure it. And I thank you so much for focusing on this.

Senator PRYOR. Thank you for all that you do, but certainly on this issue because you have been a tireless advocate for your State and for your constituents back home. So thank you, and your remarks are well stated.

I know Senator Landrieu has to go and manage the Small Business bill on the floor, but I want to introduce our first panel.

Our first witness today is Elizabeth Zimmerman. She is Deputy Associate Administrator of the Office of Response and Recovery at the Federal Emergency Management Agency.

Our second witness today is Michael Chodos. He is the Deputy General Counsel at the Small Business Administration.

I want to welcome both of you.

So, Ms. Zimmerman, why don't you lead off?

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STATEMENT OF ELIZABETH ZIMMERMAN,[1] DEPUTY ASSOCIATE ADMINISTRATOR, OFFICE OF RESPONSE AND RECOVERY, FEDERAL EMERGENCY MANAGEMENT AGENCY, U.S. DEPARTMENT OF HOMELAND SECURITY

Ms. ZIMMERMAN. Great. Good morning, Chairman Pryor 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 FEMA. It is an honor to appear before you today on behalf of FEMA to discuss our process for recouping improper disaster assistance payments.

The recoupment process is challenging, yet it is legally required by FEMA's responsibility to protect taxpayer dollars. 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 with its responsibility to be good stewards of the taxpayer dollars. FEMA also continues to aggressively take measures to prevent, detect and work with our partners to punish fraud related to disaster assistance.

As a result of both the lawsuit and the new DHS regulations in 2007, FEMA has been working to make significant changes to our recoupment process. When an individual is identified as recipients of an improper disaster assistance payment, FEMA will send them a notice of debt letter.

The letter, now written in plain, easy to understand terms, outlines how much money is owed to the government along with the reasons why funds are being recouped. The notice of debt letter is a bill and specifies the amount of money that is due to FEMA within 30 days. After 30 days, FEMA will begin charging interest on the debt at the interest rate which is 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, requesting a compromise of all or part of the debt based on inability to pay, or filing an appeal within 60 days.

Also, per the DHS regulations, 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.

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

Over the last few months, FEMA has been reviewing the cases of approximately 160,000 applicants that may have received improper disaster assistance payments to verify if this is in fact a debt and the amount that is owed of the debt.

Earlier this week, we published the Federal Register notice announcing our intent to proceed with recoupment and outlining the revised recoupment process. We also began mailing notice of debt

[1] The prepared statement of Ms. Zimmerman appears in the appendix on page 34.

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letters yesterday. These letters will be mailed on a rolling basis, starting with the most recent disasters.

Unfortunately, during the response to any disaster, whether through fraud, human or accounting errors, or for other reasons, assistance sometimes goes to individuals who are not eligible for the assistance. However, we also have implemented measures to minimize the error rates and overpayments and ensure that disaster assistance is given expeditiously only to those who truly need it.

Early in the recovery from Hurricanes Katrina and Rita, FEMA implemented changes to the disaster assistance application process which minimized the error rate for overpayments and reduced the opportunity for waste, fraud and abuse. In fact, as a result of the measures put in place, we have drastically reduced the error rates for improperly disbursed funds, which have gone from 14.5 percent after Hurricane Katrina to less than 3 percent error rate in Fiscal Year 2009.

Although FEMA has made improvements to reduce the opportunity for overpayments, if a potential recoupment case shows evidence of fraud, FEMA's fraud prevention unit investigates; where appropriate, refers cases immediately to the DHS Office of the Inspector General for criminal review. The process has never stopped.

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, transparent and fair process to recoup overpayments where necessary.

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

Senator PRYOR. Thank you. Mr. CHODOS.

STATEMENT OF MICHAEL CHODOS,[1] DEPUTY GENERAL COUNSEL, OFFICE OF FINANCIAL PROGRAM OPERATIONS, U.S. SMALL BUSINESS ADMINISTRATION

Mr. CHODOS. Good morning, Chairman Pryor and distinguished Members of the Subcommittee. My name is Michael Chodos, and I am the Deputy General Counsel at the Small Business Administration. It is an honor to appear before you today on behalf of SBA to discuss the safeguards in place at our agency to identify improper payments and to prevent duplication of benefits (DOBs) in our disaster lending program.

SBA plays a crucial role in helping individuals and businesses recover after a disaster. SBA's disaster loans help rebuild homes, replace damaged property and allow businesses to get back up and running, and their employees back to work.

But SBA's job does not stop with providing critical disaster loan assistance. SBA also makes sure that assistance is provided and supervised in accordance with applicable law. SBA takes very seriously its ongoing responsibility to prevent waste, fraud and abuse. Maintaining integrity and accountability in all our programs is a fundamental agency priority.

[1] The prepared statement of Mr. Chodos appears in the appendix on page 41.

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For that reason, SBA appreciates deeply the role that the Office of the Inspector General plays in helping ensure that our programs are effectively managed. During this Administration, SBA and the OIG have worked in partnership to make improvements across the agency. We believe the OIG reports that the Subcommittee is examining today are excellent examples of clear, actionable input from the OIG upon which the agency has been able to build real improvements that make its programs more efficient and effective.

In general, SBA agreed with the OIG's recommendations in these reports, and we have taken steps to implement them. Let me describe just a few of the most significant changes we have made.

SBA's Office of Disaster Assistance (ODA) revised the sampling design methodology for estimating improper payments. Specifically, the office contracted with a statistician to review the process and revise the methodology in accordance with the Office of Management and Budget (OMB) guidance.

We also reengineered the quality control (QC), process. Previously the QC process was performed by a group of employees which reported to the same management team that was responsible for loan origination. They now report directly to the Director of Program Policy and Evaluation in headquarters. Our QC team is now better trained, more independent and more effective.

Our loan eligibility and disbursement process has been reviewed and improved too. Our line managers have received new and extensive training on how to detect and avoid improper payments.

We have strengthened our process for identifying, applying and offsetting insurance payments received by our borrowers to make sure that all available insurance is applied before loan proceeds are disbursed.

And we have improved our ability to track and collect insurance benefits by obtaining and following up on documented assignments of insurance proceeds.

In addition to improving our own systems, we continue to improve our coordination and cooperation with other agencies involved in disaster relief. SBA and FEMA have consistently worked together to improve our delivery of disaster assistance to disaster victims and avoid potential duplication of benefits.

SBA and FEMA have implemented interagency agreements which allow us to share information and data bases, and to coordinate our loan and benefit review and eligibility determinations. These data exchanges are important tools that provide improved disaster assistance to victims, accelerate referrals to SBA and help both agencies evaluate potential duplicative benefits in real time.

Finally, SBA's Office of Disaster Assistance senior leadership and FEMA's response and recovery management teams have initiated quarterly meetings to discuss ways to enhance the delivery process and provide better assistance to disaster victims.

While SBA is pleased with the progress it has made to eliminate improper payments and work more closely with other agencies like FEMA, we recognize that additional work remains. As hurricane season approaches, SBA is well aware of the important role it plays in the lives of disaster victims. We are also well aware of our role as a steward for taxpayer funds. With the changes implemented

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thus far, SBA is confident that it will be able to carry out both roles efficiently and effectively.

Thank you, and I look forward to your questions.

Senator PRYOR. Thank you. Again, I want to thank you all for being here.

I have a few questions for the panel. We have some Senators who are not able to attend this morning, and it is very possible that they will submit questions for the record, and I may submit some followups for the record as well.

I will start with you Ms. Zimmerman. What do you identify as the key factors contributing to improper payments in the aftermath of disasters? In other words, why are there so many improper payments?

Ms. ZIMMERMAN. Yes. When you look back at Hurricanes Katrina and Rita, and the amount of, that it was a major catastrophic event for the United States when we had not experienced anything like that in decades, the number of individuals that needed immediate assistance, getting assistance out there is very important. So the agency looked at the best ways to do that and as we were registering people and to make sure that we could get some assistance out on the ground.

So it is important that we acknowledge the fact of we were trying to take care of our first mission of taking care of disaster survivors, but also trying to be good stewards of taxpayer dollars.

So as the numbers from Hurricanes Katrina and Rita were higher, as I said, the improper payment rate of 14.5 percent, and being able to put in the safeguards that we did shortly thereafter, to further, to lower that to less than 3 percent in the following years.

Senator PRYOR. Do you have any thoughts on why there are so many improper payments?

Mr. CHODOS. Thank you, Chairman Pryor. At the SBA, our program is a lending program as distinct from a grant program, and so following up on what Senator Landrieu said a moment ago, the improper payment analysis is not the same thing as an analysis of money lost. It is an analysis of whether or not all of the appropriate rules, procedures and eligibility determinations were undertaken in each and every case.

And so at the agency, at our agency, the IG looked into and focused on some ways in which our process for determining eligibility, for obtaining all required collateral, for assuring repayment ability and for making sure that insurance proceeds were properly applied. They looked at all of that to see if we were following those procedures properly and implementing them effectively.

I think that the opportunity for improvement for the SBA came in being able to relook at those procedures and make sure that we had better training, better methodology and better implementation on those fronts. That, I think, is where the improper payment problem arose.

Senator PRYOR. And do you feel that SBA has taken the steps necessary to clean that up?

Mr. CHODOS. Yes. I think the first step in taking effective steps is to make sure you understand the problem, and the IG has been very effective in helping us focus on the areas where procedures in place, but they were not effective, as effective as they could have

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been. So the SBA has implemented changes in methodology, improvements in training and changes in the actual line management at every step through the process, and I believe that the improper payment rate has now been substantially addressed and improved.

Senator PRYOR. Mr. Chodos, is there a redundancy between the two agencies in terms of trying to help victims of disasters? Is there an overlap where someone may so-called double-dip?

Mr. CHODOS. I would say actually there is not overlap or redundancy; there is coordination.

In other words, FEMA provides one kind of assistance—immediate, grant-based assistance to disaster victims. The SBA comes in. Essentially, the best way to think of it is coming in right behind FEMA to provide loans to help get businesses and individuals back up on their feet.

So the SBA needs to coordinate and does coordinate with FEMA to make sure that when a loan is being considered the SBA knows about such grants as have already been made by FEMA. There is excellent coordination between the agencies now to share data bases and information, to make sure then when we are considering whether to make a loan and in what amount we know about what FEMA has already done and in what amount.

Senator PRYOR. Let me ask you, Ms. Zimmerman. I know that if Senator Landrieu were here she would ask a similar question.

Hurricane Katrina happened in late August 2005, and we are just now sending out a large number of recoupment letters. Why the 6-year delay in recoupment?

In trying to put myself in the shoes of the victims of Hurricane Katrina, I try to imagine them opening their mail and saying, wait, I owe the Federal Government X amount of dollars for something 6 years ago?

Why the delay? I guess that would be the first question.

Ms. ZIMMERMAN. Sure. Back in April 2007, so 2 years after the disaster, just about 2 years after, a lawsuit was filed by a number of applicants, saying that they had not been given due process in their claims. We were already in the recoupment, doing recoupment following Hurricanes Katrina and Rita.

And then in June 2007, that case went before the court, and the court rendered the decision that FEMA had to stop its recoupment process.

So from June 2007——

Senator PRYOR. And you had to stop the entire process, not just with that class?

Ms. ZIMMERMAN. Right. FEMA had to stop their entire recoupment process.

So in 2008, through discussions with the court, it was in September 2008 that FEMA actually filed a public Federal Register notice stating that there was any. We had stopped our recoupment process and we would put it on hold until such time that we were able to allow it to go forward. So with FEMA doing that in August 2009, the case was actually dismissed.

Now in that time period also is when DHS adopted the debt collection regulations and changed the process. So during that time period, no recoupments could happen until August 2009 when the court case was actually dismissed.

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I came on board with FEMA and the Federal Government in June 2009. At that time, it was brought to my attention and others joining the Administration, the agency, that this was sitting here.

So as we have been looking at it and moving it forward, making sure it was—the No. 1 thing for us was to make sure we were doing the right thing; we were doing it the right way.

We know that the disaster survivors that were impacted by this and what we were going to potentially be going back and asking them. So it is a process that has taken time to make sure that we could do it right, do it efficiently and not place additional burden upon the disaster survivors.

Senator PRYOR. Let me ask about a case from my State as an example. We do not have a lot of these cases in my State, but we do have some.

Ms. ZIMMERMAN. You do have some.

Senator PRYOR. There is an applicant who appears to owe $28,800, and the reason given is that he applied to receive assistance for a property that was not his primary residence. Will that notice of debt letter be the first he hears of the debt?

Ms. ZIMMERMAN. Yes.

Senator PRYOR. OK. For 5 years, 6 years, he has been totally unaware that he received this payment improperly?

Ms. ZIMMERMAN. Yes, unless he has been contacting and working with our case managers at our processing center. We have not been able to go back and send any letters or do anything up until we filed the Federal Register notice earlier this week.

Senator PRYOR. Before the lawsuit, the court determined that FEMA was not following due process, whatever that might mean in this circumstance. You are confident FEMA is doing that now?

Ms. ZIMMERMAN. Yes. What we did after the case was filed, looking at our process, the thing that came back was the fact that our letters did not give sufficient information to the disaster survivors.

So we have changed our letters so that it is very clear and plain as to why it is and in detail why it is we are asking for this money back, giving the specific reason which was not there before. Plus, it affords if an individual cannot provide the information completely in documentary, written form, they can write and they can request oral hearing, which was not afforded prior.

Senator PRYOR. And as I understand it, the total dollar amount here is $643 million?

Ms. ZIMMERMAN. That was the potential.

Senator PRYOR. OK.

Ms. ZIMMERMAN. As we have been going through the 168,000 cases, I can guarantee you that number will come down for the cases, and therefore the dollar amount will also come down.

Senator PRYOR. So when you have 168,000 cases, does that mean you have 168,000 payments? Is that how that works?

Ms. ZIMMERMAN. Yes, it is the applicants themselves.

Senator PRYOR. That you think potentially could be erroneous. The 168,000 could be potentially could be.

Ms. ZIMMERMAN. Yes, that is right. That is the number of cases that we are looking at to verify that it is still because it was noted some of those cases have been sitting for potential recoupment for a number of years.

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Senator PRYOR. So are you sending the letters out to all 168,000, or is there a screening process before you send out a letter?

Ms. ZIMMERMAN. Yes. That is why we are taking our time to make sure we are doing it right. We are not going to send out letters to the whole 168,000. As we go back and review the cases, if we have additional information that was potentially overlooked, those cases will no longer be sent a letter.

Senator PRYOR. Do you have a sense of how much that $168,000 number will be pared down?

Ms. ZIMMERMAN. I do not at this time.

Senator PRYOR. Now are those individuals and businesses?

Ms. ZIMMERMAN. No, just individuals.

Senator PRYOR. Just individuals. Is the bulk of that in Louisiana?

Ms. ZIMMERMAN. So the bulk of it is from Hurricanes Katrina and Rita.

Senator PRYOR. In Louisiana? The bulk?

Ms. ZIMMERMAN. In Louisiana, Mississippi, Alabama, yes.

Senator PRYOR. OK. And that $643 million and that 168,000 figure, is that just for the two hurricanes or is that everything?

Ms. ZIMMERMAN. That is everything.

Senator PRYOR. I see. OK. Let me just ask a few more questions. I do not want to keep you all day, but I do have a few more, and then I will submit the rest for the record.

Let's see. Let me go back to Ms. Zimmerman if I can. How does the FEMA appeals process work?

Apparently, there is a new process now. You get a letter. And how long does it take?

If I get a letter and I want to dispute the claim, it sounds like I can may be in touch with a case manager initially. Then, if I want a hearing or further appeal, I get that. How long does that process take?

Ms. ZIMMERMAN. Yes. Once we send out the letter, the letter is dated and an applicant has 30 days from the date of the letter to get back to us.

Within that letter, it spells out what they can do. They can send in their payment. They can call us and pay by credit card. They can call in and request a payment plan if they are not able to pay in full, or they may call in and request a compromise to that debt, to have a compromise either partial or in full. If they cannot do that, they need—the No. 1 thing is to make sure everybody does call in or correspond back within 30 days.

Also, they can file an appeal. With the letter, they find out what it is they need to submit if they are going to put in an appeal to us. Beyond that, after the 30 days, they do actually have 60 days to submit the appeal.

If they do not contact us within the 60 days, then they will get a letter of intent of which we will send to them, to forward their debt on to the Department of Treasury.

So within—and once the clock—after 60 days, or after 30 days, they start to accrue interest. That is by law that we do that. And like I say, the appeal must be within 60 days from the date of receiving the letter.

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Senator PRYOR. OK. If they go through the appeal process, do they still have to pay interest on the full amount that they have to pay?

Ms. ZIMMERMAN. Yes. If it is——

Senator PRYOR. In other words, I am clarifying that had they done this within 30 days and just cut a check, they would not have any interest payment.

Ms. ZIMMERMAN. Correct.

Senator PRYOR. But if they appeal it sounds like it could potentially take several months to go through the process.

Ms. ZIMMERMAN. We have 90 days to respond to their appeal. If we, for some reason, are unable to respond to them within 90 days, the interest stops accruing after 90 days.

Senator PRYOR. OK. All right. And at any point does either FEMA or the Department of Treasury turn this over to a debt collector, or is this all done by the government?

Ms. ZIMMERMAN. This is done by the government.

Senator PRYOR. Now let me ask you, Mr. Chodos, if I can. My sense is that because the nature of SBA assistance is more in the loan area there is an issue that arises frequently: The loan value and how much you should loan vis-a-vis insurance. Can you walk me through that and explain some of the tensions and how they are resolved?

Mr. CHODOS. Yes. Thank you, Chairman Pryor, for that question.

The basic structure that permits the agency to make disaster loans requires that the agency make a loan for the uninsured damage done to a business or to personal property.

So the agency is required to look at a number of things in order to determine how much of a loan can be made. First and foremost, it needs to look at the level of the damage, the verifiable level of damage. The next thing it needs to look at is whether or not the disaster victim has insurance, either flood insurance or hazard insurance.

Senator PRYOR. Let me stop right there because I know after Hurricane Katrina there was a real problem with the insurance industry saying: Oh, wait a minute, this was not caused by wind. This was caused by water and vice-versa.

Victims got the runaround from the insurance industry. And I know there were some lawsuits about that, but I do not know how all that worked out in the end.

So while that is in limbo are you looking at the individual's policy and saying well, the insurance company ought to cover this?

I mean how do you do that? How do you know?

Mr. CHODOS. As a general proposition, the agency deals with the damage, meaning the total damage amount, and then insurance payments.

So for example, generally, agency loans for repair or for economic injury are not disbursed all at once. The agency will determine at the beginning the amount of the overall loss, will ask the borrower to let the agency know how much insurance is available and will begin to distribute the loan as construction and repair take place.

Now the agency also receives insurance payments as those come in. And as you have just pointed out, insurance payments often come in over time.

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Senator PRYOR. Right.

Mr. CHODOS. And when they come in over time, sometimes it is days, weeks, months or even years. And what the agency will do is apply those insurance payments when they come in to reduce the remaining balance on the loan.

But if they do not come in, if there is not actual insurance coverage for a particular disaster, then the agency is not going to penalize the borrower by saying well, we think you could have gotten insurance, but your insurance company would not pay it, so we are now penalizing you.

Senator PRYOR. So does that mean the insurance payments get assigned to you? Is that how it works?

Mr. CHODOS. So the agency has several tools available to it to make sure that it gets insurance payments.

So one thing it does, of course, is to deal voluntarily and directly with the borrowers, almost all of whom work with us very cooperatively to let us know about their insurance coverage and to make sure we get payments.

The agency also, after its recent process improvements, gets insurance assignments in place to make sure that we have the insurance company aware of our loan and sending us payments directly when they come in.

Senator PRYOR. OK. So the way it is set up is the insurance company pays you, and then you credit the balance of the loan.

Mr. CHODOS. Exactly.

Senator PRYOR. And are you finding incidents of fraud in this arrangement?

Mr. CHODOS. Well, there is always a risk of fraud in any program in which payments are coming from different sources at different times and where the agency, even though it might have documents in place, including assignments, is not literally in control of the flow of the money.

But by and large, the problems that have been showing up and which made their way into the IG reports about improper payments were not specifically fraud on the agency. They pointed out areas in which the agency's process did not adequately identify and followup upon those payments, and then make sure they were properly applied. For example, payments might have come into a center and then been forwarded to the borrower without properly doing the accounting and applying them to outstanding balances.

Senator PRYOR. I do not have the IG report on me right now, but how many cases were there that SBA IG thinks were improper or overpaid?

Mr. CHODOS. Well, there were several reports identifying amounts that ranged from in the—of course, the IG reports involve sampling, and so they ranged from low figures up to figures well in excess of several millions of dollars.

But of course, they fell into a number of different buckets and categories, and so I think probably the simplest answer to that question is that they identified substantial numbers of investigated and specifically looked at loans that involved this failure to properly apply payments. I can get you those specific figures if you would like.

Senator PRYOR. We have them somewhere, but thank you.

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And Ms. Zimmerman, over at FEMA, what percent? Just human nature being what it is, you are going to have some fraud here. But what percentage is fraud or some sort of intentional wrongdoing by people?

Ms. ZIMMERMAN. So far from Hurricanes Katrina, Wilma, Rita and the disasters we have prosecuted 1,360 cases. So of the hundred, the millions of cases that we have had, that is——

Senator PRYOR. You have prosecuted how many?

Ms. ZIMMERMAN. One thousand three hundred and sixty.

Senator PRYOR. OK. All right. Have you all done any sort of analysis of how your collection efforts might be impacting the people involved here?

Some of them are trying to get back on their feet, trying to put Hurricane Katrina behind them and they are trying to make a fresh start. Have you done any analysis of how that might impact their ability to complete their recovery?

Ms. ZIMMERMAN. Yes. When we look at this, we know what the individuals have been through, all the disaster survivors of all the disasters we work with. That is why our main focus has been to see how we can minimize that, looking at how we work, to make sure.

That is why we have made changes to the process, to make sure that we fix it, so that in the future we do not have to go back and do this, so looking at this.

By law, we must go back and collect the debt for improper payments, but we do look at this, and we want to work with people and be sensitive to what it is they are going through and what they have gone through over the years.

Senator PRYOR. Let's say that you have a person out there who just will not pay, so you turn it over to the Treasury. Then what do they do?

Ms. ZIMMERMAN. Then the Treasury will work with them to see what they can do. Once again, they can request some compromise of the debt and work with them in that.

Senator PRYOR. Is anybody analyzing how much it costs the government to try to recoup this money?

In other words, are we coming out ahead on this or are we losing money on this?

Ms. ZIMMERMAN. That is one of the things also as we are looking at this process and being sensitive to the economic times for both the government and for individuals, looking at how we do this, how we provide due process and do our due diligence in this. So it is something that we have great concern of also, and that is why we are trying to do it the best that we can.

Senator PRYOR. But have you done any analysis of how much it actually costs to try to collect? I mean say every thousand dollars you collect, how much it actually costs the government to do that.

Ms. ZIMMERMAN. No. I mean we are doing this within our own infrastructure that is already in place with our national processing centers, the case managers that are there working on this and our FEMA finance individuals that are also there. So the infrastructure is already in place. We are not having to set up anything new. This is something that the case workers did prior to 2007, and they will continue in the future.

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Senator PRYOR. Thank you. Well, I could ask a lot more questions. This is interesting, and you are both obviously are on top of it and a good resource for the Subcommittee, so I appreciate that.

What I would like to do at this point is just hold my questions for the record, and I am sure I will be submitting some additional questions to you, and we will keep the record open here for 2 weeks. I would really appreciate it if you all could get back with us on those, and other Senators will probably have questions as well.

So I want to thank you both for being here, and for your helpful testimony, and I am glad that you both are on top of it. We look forward to working with you. So, thank you.

Mr. CHODOS. Thank you.

Ms. ZIMMERMAN. Thank you, Chairman.

Senator PRYOR. Now what we will do is we will move on to our second panel, and it is going to take just a minute here for the staff and witnesses to switch and get in place here. Let me go ahead and introduce our two as they are getting set up, in the interest of time.

Our first witness on the second panel is Peggy Gustafson. I hope I am pronouncing that the right way. If I am not, you tell me. Peggy Gustafson is the Inspector General at the Small Business Administration. She has had a long career in doing this type of work, and one of those jobs was here with Senator McCaskill if I understand that correctly. So that is great.

And our second witness is Matt Jadacki, the Assistant Inspector General for the Emergency Management Oversight in the Office of Inspector General at the Department of Homeland Security, one of the longer titles I have seen, but an important title.

And again both of you all bring great expertise and background to the table, and we appreciate that.

So Ms. Gustafson, would you like to start? We are doing a 5-minute rule on your opening statements, and by the way, both of the previous witnesses kept it under 5 minutes. So I should have given them the gold star when they were here, but I did not.

Go ahead.

STATEMENT OF PEGGY GUSTAFSON,[1] INSPECTOR GENERAL, U.S. SMALL BUSINESS ADMINISTRATION

Ms. GUSTAFSON. Thank you, Senator Pryor. My name is Peggy Gustafson, and thank you for the opportunity to testify today on behalf of the Office of Inspector General, Small Business Administration.

And especially, thank you for the opportunity to get me back in this hearing room where I have spent many hours when I was a staffer on the Hill. It is exciting for me to be here. So, just personally, thank you.

I want to focus my testimony today on several audits that our office has recently conducted regarding duplicate benefits in the Disaster Loan Program in SBA. As noted, this program provide low interest long-term loans for physical damage caused by disasters to both individuals and to businesses, regardless of size. It is not spe-

[1] The prepared statement of Ms. Gustafson appears in the appendix on page 44.

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cifically a small business program. This is the loan program for disaster victims in the Federal Government.

As Mr. Chodos had indicated, borrowers are not entitled to obtain loans for any amounts that are covered by insurance, grants or other nongovernmental sources. And what SBA does is they enforce this restriction on duplication of benefits by either reducing the amount of the loan approved in the forefront, in the beginning, during the processing, closing or disbursing of those loans, or requiring those borrowers who have received their disaster loans to assign any insurance benefits they receive to SBA, which, as noted, would be used to pay down the balance of any loans that have been completely disbursed already.

The benefits to a proper duplication of benefits analysis are many. For one thing, when a duplication of benefits analysis is done right and is effective, it reduces the amount of debt owed to the Federal Government because it does reduce the amount of outstanding loans and the amount of loans made. This immediately has the impact of reducing cost to the taxpayers because these disaster loans do carry a taxpayer subsidy.

And the other thing that a duplication of benefits analysis is it allows that other Federal moneys to go to victims who have not been fully compensated for their loan, which is to say if it prevents a disaster victim who has had all their needs met from getting assistance, that assistance can then go to somebody who still has unmet needs as a result of the disaster.

So it is a benefit to all disaster victims when it is done correctly.

We, the OIG, recently conducted three audits that reviewed the effectiveness of SBA's attempt to reduce duplication of benefits. The most recent audit that we completed was issued last month, and it examined whether disaster servicing centers had effective systems for processing insurance recovery checks to avoid the duplication of benefit. And the other two audits related to the Gulf Coast disasters and the disaster loans for the Midwest floods, and looked at whether SBA was adequately checking for insurance benefits when it was processing and disbursing those loans.

The February 2001 audit found that SBA did not have effective procedures in place to avoid duplication of benefits when it was receiving checks for borrowers from insurance companies. We actually found that the two servicing centers that SBA had, one had a 47 percent rate of error and the other had a 23 percent error rate in a duplication of benefit analysis.

As indicated, SBA had agreed with our recommendations and is working to implement those recommendations already, which is something that we find to be a very positive result. They are attempting to recover some of the duplicate benefits from borrowers and are involved in increased training for those individuals in the servicing centers that are faced with doing this duplication of benefit analysis in the face of these recovery checks.

In the other audits that were performed in 2009, we had found that the issue was that the loan officers had not been checking to see if insurance payments had been made before approving disbursing of loans. And again, SBA agreed with our recommendations and has made very positive changes to make sure that those kinds of checks, those kinds of calls are being made to see whether

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there are insurance proceeds that need to be taken into consideration.

So in general, the results of these three audits have been well received by the agency, which we found to be a very positive development. We are pleased with the actions that they have taken, and we look forward to working with SBA and this Committee, going forward, to do anything more that needs be done in the area of duplication of benefits. Thank you.

Senator PRYOR. Thank you. Mr. Jadacki.

STATEMENT OF MATT JADACKI,[1] ASSISTANT INSPECTOR GENERAL, EMERGENCY MANAGEMENT OVERSIGHT, OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. JADACKI. Good morning, Mr. Chairman, and thank you for pronouncing my name correctly. It is about the first time in 30 hearings somebody got it right, so I appreciate that.

As you mentioned, my name is Matt Jadacki, the Assistant Inspector General for Emergency Management Oversight at Homeland Security. Thanks again for the opportunity to discuss the Federal Emergency Management Agency, the progress they have made to recoup improper payments and to prevent and deter fraud, waste and abuse.

Improper payments have been a growing problem, as you pointed out in your opening statement, for the Federal Government. Reported improper payments by government agencies have increased significantly from an estimated $20 billion in 2000 to approximately $125 billion last year.

The Congress and the President have brought increased attention to this issue. The Improper Payments Elimination and Recovery Act of 2010 has focused agencies' attention not only toward identifying programs vulnerable to improper payments and estimating the annual error rate of such programs as called for by the Improper Payments Act, but requiring agencies to determine the cause of such improper payments, describe the actions taken or planned to correct these causes and report the actions to recover the improper payments.

A March 2010 Presidential memorandum, "Finding and Recapturing Improper Payments," states that executive departments and agencies should use every tool available to identify and reclaim funds associated with improper payments.

As a former Chief Financial Officer (CFO) at FEMA, I am keenly aware of the difficult decisions necessary to provide assistance to disaster survivors. If FEMA spends too much time verifying all the details in an application, they may be criticized for delivering disaster assistance too slowly. Conversely, if they drop or circumvent controls designed to detect or prevent improper payments in order to expedite assistance, they may be criticized for disbursing funds that are more prone to fraud or erroneous payments. FEMA needs to balance its delivery of assistance with some level of control to provide assurances that funds are delivered to eligible recipients in the proper amounts.

[1] The prepared statement of Mr. Jadacki appears in the appendix on page 46.

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Since Hurricanes Katrina and Rita, FEMA has disbursed over $7 million in disaster assistance payments under its Individuals and Households Program (IHP). Last summer, we began an inspection of FEMA's fraud prevention efforts as part of planned audit work. We learned that FEMA was not attempting to recoup the 160,000 individual cases of improper IHP payments totaling $643 million, identified by FEMA following Hurricanes Katrina and Rita.

Many factors result in these improper payments. Because of the high volume of applicants following Hurricanes Katrina and Rita, FEMA turned off many of its systems controls in order to process registrations quickly, allowing thousands of cases of potentially fraudulent and other improper payments to occur. Some applicants used vacant lots, post office boxes, cemeteries as their damaged addresses. Others received payments for property based on falsified rental agreements with addressed in a damaged area. FEMA also made improper payments based on multiple registrations with the same disaster-damaged addresses.

In some cases, human error led to the improper payments. For example, a FEMA case worker may have entered incorrect banking information into the National Emergency Management Information System (NEMIS) data base, resulting in a nonapplicant receiving payment.

In some cases, the applicant's insurance covered the damage or a secondary residence was damaged, making the applicant ineligible for assistance, but the applicant was not aware of these conditions of eligibility, and the FEMA case worker did not collect all the necessary information to make that determination.

These improper payments were discovered in a number of ways. Some resulted from audits by our office and the Government Accountability Office. Tips were received by various fraud hotlines, from neighbors and Federal, State, and local officials. FEMA's fraud prevention investigative branch uncovered cases through data-mining and calls from law enforcement officers. Still others were found by FEMA during staff reviewing applicants' files when assistance needed to be extended or an applicant applied for a second type of assistance.

FEMA stopped recouping these payments in June 2007 as a result of a lawsuit. The same year Department of Homeland Security issued department-wide data collection standards which superseded FEMA's process. FEMA developed a new recoupment process which has been awaiting approval from the FEMA Administrator since 2008.

In November 2010, FEMA staff began a review of each case. If the review results in a finding that the payment was proper, FEMA records will be revised and any portion of the debt paid to date will be reimbursed. The applicant may appeal, make the required payment or call FEMA to negotiate a payment plan, request a compromise or waiver of all or part of the debt based on inability to pay. If the repayment of the debt is not resolved, FEMA forward the debt to the Department of Treasury.

Two days ago, subsequent to submission of my written statement, FEMA announced that a new recoupment process had been approved. However, the announcement did not state when the first

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notices would be mailed, and we believe that this step should begin promptly.

FEMA has made improvements in internal controls after Hurricanes Katrina and Rita and prior to Hurricanes Ike and Gustav, which resulted in significant decreased in duplicate, improper and potentially fraudulent registrations. Leading reasons for the improvement include multiple tests by a contractor to check the validity of information supplied by applicants, such as Social Security numbers, damaged property addresses as well as in-person inspections of every damaged property to validate damage, occupancy and ownership.

We will soon be issuing a report on FEMA's fraud prevention efforts, which includes additional background on the recoupment issue, and discusses the current status of FEMA's fraud prevention and investigative branch created after the four hurricanes in Florida in 2004. The report will suggest possible improvements to internal controls for the IHP program and encourages fraud prevention awareness training for all employees.

Mr. Chairman, this concludes my prepared remarks. I will be happy to answer any questions you may have.

Senator PRYOR. Thank you both.

If I could start with you, Ms. Gustafson. Is that close enough?

Ms. GUSTAFSON. That is perfect.

Senator PRYOR. OK. Let me ask a little bit of a technical question, I guess, about Section 312 of the Stafford Act. It is the duplication of benefits section. Do you believe that the language needs to be rewritten or clarified to give better guidance to the agency about how to interpret the statute across agencies?

Ms. GUSTAFSON. Actually, I can answer that question now——

Senator PRYOR. All right.

Ms. GUSTAFSON [continuing]. Because I think it definitely does.

Senator PRYOR. It needs to be rewritten.

Ms. GUSTAFSON. I absolutely think it does need to be rewritten. I think that there have been a lot of—first off, I do not think it is the clearest language ever anyway.

Senator PRYOR. Right.

Ms. GUSTAFSON. But I think that there have been significant developments in the Federal Government's response to disaster victims and kind of the disaster relief framework that really caused me to believe there should be a long look at Stafford.

For example, as you noted in your opening statement, HUD plays a very big role in disasters now, and that really was not the case when that section was first written. And I think it would be helpful because you are talking about at least three agencies with primary responsibility for money. I mean you have SBA with loans, you have FEMA with their grants, and you have HUD with CDBG.

I think it would be tremendously helpful for the government to give very specific, clear notice of what Congress's intent is as far as how each of those agencies should be. They know they need to coordinate, but what Congress views how they should coordinate and kind of what the disaster relief should look like.

Senator PRYOR. Well, let me ask. The followup on that then is do you have either on paper or in your minds how that should be changed and how those responsibilities should be coordinated?

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Ms. GUSTAFSON. I do to a certain extent. I would be very happy to share with you in a written form kind of some thoughts.

I mean I do think that my preference, just kind of speaking just informally here, is I think that there is a germ of an idea of what the relief should like. I mean what the Stafford Act envisions, which is immediate relief, loans that the government would then expect to be repaid but then also grants. And I think that you can keep that kind of intent on the government in place but just kind of tighten it up, which is to say acknowledge that the first thing you need to do is get money to the disaster victims.

I mean they do not need to be waiting for loans to get money that they need right away, but then note that in general there is some money that probably should be given in the form of loans that the government would expect to have back, and then again grants as well.

So I would be happy to get back with you on something specific. We would be very happy to work with staff to talk it through.

Senator PRYOR. Yes, that would be great. If you could put your thoughts down in writing. It does not have to be legislative language but just the concepts and how you think the pieces of the puzzle fit.

And also, as you are doing that, let me ask this question. Do you think that the three agencies with the primary responsibility agree on what their roles should be, or is there a legitimate conflict or disagreement about how they should be working in these disasters?

Ms. GUSTAFSON. I think that there is enough ambiguity in the laws and the regs right now that it is not that they necessarily do not agree, but I think that they would be aided by more specific guidance.

I do think HUD is an incredibly important player at the table. I think they are not brand new but more recent. I think that every agency is doing what they believe their mission to be, but I do not know.

Absolutely, I mean I think they are taking their mission very seriously. I think they are doing it. But I do not know that as they act along those lines whether the coordination is exactly where it needs to be.

Senator PRYOR. Right. And part of that, at least in large part in your mind, is because the statute is hazy on that?

Ms. GUSTAFSON. Yes.

Senator PRYOR. Yes.

Ms. GUSTAFSON. Yes, and that we are talking about different agencies at different times.

Senator PRYOR. Right.

Ms. GUSTAFSON. So HUD comes in at a different time.

Senator PRYOR. Right. OK. Well, if you could work on that for us, that would be great, and share that with our staff. We would like to look at that, and maybe if we can work through the process maybe we can develop some legislation on it.

You said a few moments ago, I think at least the way I heard what you said is that there seems to be a pattern where SBA staff is not checking with insurance companies to know what has been paid or what will be paid. Not to put Mr. Chodos on the spot, but on the previous panel he said that he felt like there was pretty

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good coordination between the insurance industry and SBA. So I guess I am detecting a note of inconsistency there.

Ms. GUSTAFSON. I think that rather than inconsistency I was really talking about what the audits had found, and those audits were in 2009. I think that my audit staff has been very satisfied with the changes that SBA has made, which is to say doing the regular checks with the insurance company, doing the training that says before you do a disbursement you are going to call the insurance company on record and say have you disbursed any of the money.

So no, rather than discontent, I think that is an example of kind of a before-and-after testimony.

Senator PRYOR. Do the insurance companies have to deal with SBA by law, or is this one of these things that basically the insured sort of assigns his payments, or his rights, under the insurance contract to you? Is that how that works?

Ms. GUSTAFSON. Yes, they do not have to deal with it by law.

So basically, the way that it kind of has to work, given the current law, is SBA is initially dependent on the insured for telling SBA that there is insurance there. Now they tend to be home, so there is usually insurance. And I do not know that. I am not saying that is a problem. But first you have to hear that there is an insurance company, and then you will get the assignment and send it to the insurance company.

And sometimes the insurance company, as a lawyer, does not really care. So they will be sending the checks direct. That definitely does happen——

Senator PRYOR. Right.

Ms. GUSTAFSON [continuing]. Where they still send their checks directly to the insured, even in the face of an assignment. It is not that they are doing anything against the law. They are just doing the way they are doing.

Senator PRYOR. Right. But what you are saying is you are very pleased with the changes that have occurred.

Ms. GUSTAFSON. Yes.

Senator PRYOR. And you think it is set up the proper way now, about as best as possible. They are doing it the way they ought to do it now?

Ms. GUSTAFSON. They are doing the best that they can do. Yes, they are doing it the way they ought to be doing it. And my understanding is the testing that they have even done to see if it is being done, it is being done. So they have instituted that type of control, and it appears that control is being used by the employees at the center.

So, yes.

Senator PRYOR. As best you can tell are there any obstacles that remain between SBA and the insurance company? Are there any legal reasons or even State law reasons, or anything like that, that are causing a problem there as best you can tell?

Ms. GUSTAFSON. No, I do not think there are any legal obstacles. No.

Senator PRYOR. OK. Mr. Jadacki, let me ask you about something that you said. You mentioned that several of FEMA's programs are at high risk for improper payments, and there were $186

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million in improper payments in 2010; there are likely to be about $163 million in improper payments in 2011 and another $140 million in 2012.

To me, when I hear numbers like that, it sounds like we have a chronic problem. Year after year after year, we are seeing the same problems over and over. Is that fair?

Mr. JADACKI. Yes, there has been a number of programs that are identified high risk. It is not only the disaster programs. It also includes national flood insurance programs and other types of preparedness grants.

And again, I want to make it clear. An improper payment does not necessarily have to be fraud. It could be the correct payment to the incorrect person or individual.

But FEMA is required by law to estimate how much the percentage would be and the total amount based on that percentage every year under the Improper Payments Act.

Senator PRYOR. And so how? Give me a sense of context here because again if you are talking about maybe $186 million 1 year, $163 million another, $140 million another year, it does seem maybe there is a downward trend, maybe. But in the context, how much money are we talking about total here where there might be $186 million in improper payments?

Mr. JADACKI. It all depends on whether you are dealing with disaster payments alone and the amount of disaster activity during that period. It could be a major catastrophic event, and you would see a spike like we saw after Hurricanes Rita and Katrina. In low disaster years, it could be significantly less. So it is hard to predict based on just a steady average like other programs would have.

Senator PRYOR. So does FEMA need to make changes to prevent these improper payments, and if so, what would those be?

Mr. JADACKI. Again, I think FEMA has already done a lot. As I mentioned in my written statement, the amount of improper payments for Hurricane Ike, for example, in Texas has dropped off significantly.

One of the important things to remember is that there was a lot of expedited assistance that happened after Hurricane Katrina. We all know about the $2,000 debit cards that went out, and they lost control about who received those things.

And also, an important back-end control is when the inspectors actually go out and validate the information with the people living in the homes that were damaged so they can provide documentation to support the damage. In a lot of cases, the individuals were not even in the area making it impossible to get accurate damage assessments.

And what FEMA did was base the amount of payment on the water levels taken from aerial views. So a really important back-end control was not in place after Hurricane Katrina.

We did some analysis after the Midwest floods, for example, in Iowa, and we saw a really big drop-off in improper payments because they started using contractors to check basic things like Social Security numbers, addresses, number of checks going to the same address, or outliers where individuals might live in a different State than was affected. We were looking for those types of things.

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It is critical to identify these things early on too. If we wait 5, 6 years later, it just makes it really difficult to recoup the funds.

Senator PRYOR. Right. And so are you confident that the new procedures are better?

Mr. JADACKI. The procedures are better. There are some controls that were either circumvented or dropped after Hurricane Katrina that are back in place right now.

There are always going to be opportunities for fraud. There are always going to be opportunities for one of the issues FEMA deals with all the time is insurance. They have to check on the application whether insurance or not. They cannot duplicate the payment if a claimant also gets insurance. If they do not check the box that there is insurance on there, there is literally no way FEMA can validate who the insurance company and whether the proceeds are coming in.

So there are always going to be opportunities for improper payments, but I think just doing basic checks like Social Security number, doing even spot-checks on residences, is going to help mitigate improper payments.

There are other tools they should be using too, such as data-mining and predictive analysis so they can focus on some of the more vulnerable areas.

Senator PRYOR. OK. So having floods in, say, North Dakota or something is one thing. Do you think these the new procedures—will stand up to another massive disaster like a hurricane, or something similarly large-scale, such as earthquakes?

Mr. JADACKI. If we look at the example in Japan right now, where a tsunami literally wiped residents away and a lot of people, it is very difficult to validate people owned those homes and whether they lived in them or not.

It is just I think FEMA needs to come up with some alternative measures. And when they took the aerial view and based on the water, it was probably a good compensating control they put in place, but certainly nothing perfect. When you have a catastrophic event like that, it is going to be very difficult to do those important validations and those types of things.

Senator PRYOR. Let me go back to something you said a few moments ago. You mentioned the debit cards.

Mr. JADACKI. Right.

Senator PRYOR. And I think those were hard to track. It may be hard for you to get a handle on the number of how much of that was "wasted." That means improper or maybe fraudulent, a lot of different categories I could go into.

But anyway, debit cards would be an example, but there were lots of other examples with FEMA during Hurricane Katrina. We could go through a long list. There was this whole thing about ice being moved around and stored and all that. In our State, we ended up housing tens of thousands of trailers, and mobile homes.

Has your office done a calculation of about how much those errors and mistakes cost the taxpayer and FEMA in Hurricane Katrina?

Mr. JADACKI. We have done a lot of work in this area, but we have not come up with an estimate. We did a lot of work after Hurricane Ike, for example and found out there were improvements in

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some of the logistics management, and I think FEMA is making good progress.

But we still did find some major problems down there, and a lot of it was just lack of coordination. It may not be the logistics system itself. It is people in Washington ordering commodities, people on the ground ordering commodities, the State getting commodities. And it does result in waste if you are getting three types of commodities and only one type is needed.

It is difficult, but I think FEMA is doing much better. They have a better, more robust emergency management system. I know they are doing a lot of partnering now with the private sector. The experts out there, like some of the Wal-Marts and some people that are actually used to moving commodities and goods and things.

They have a number of pre-disaster contracts in place, so they do not have to start doing a lot of things like they did after Hurricane Katrina where they were literally going through a phonebook, trying to find who sells travel trailers and buy their entire inventory.

So I do not think they are there yet, and I do not know if there is a ready State when FEMA is going to be there, but I think they are making improvements since Hurricane Katrina.

Senator PRYOR. But you think your office has done enough work on it to where maybe you can put together a global number about how much was again I will use the word "wasted." That may not be the best word, but how much was wasted there in Hurricane Katrina.

Mr. JADACKI. That might be difficult for us to do. Again, it all depends on interpretation of waste.

I mean you talked about the travel trailers up in Hope, Arkansas, and I had the opportunity to visit. They overbought. We saw the memo that says "buy." We never saw the memo that says "stop buying."

Senator PRYOR. Right.

Mr. JADACKI. As a result, we have an airport up there full of travel trailers. That might be considered waste. But when the decision was made, who knew?

And also the decision that you could not put travel trailers in flood plains was an issue too.

So there were a lot of things that constituted waste, but if you are on the ground you are trying to make the best decision.

Senator PRYOR. Not to relive that whole trailer thing, but I think it cost them something like a million dollars a week just to maintain.

Mr. JADACKI. Maintain that facility, right. Yes.

Senator PRYOR. To maintain trailers that they could never use. I mean the whole thing was fouled up. But I may work with you on that, see if we can get a more accurate sort of global number there.

Let me ask about Ms. Gustafson said a few moments ago that she did think that Section 312 should be revised, maybe should be rewritten, so there is better coordination and people know their roles. It is kind of unclear right now.

Do you agree with that? Do you think we ought to rewrite 312?

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Mr. JADACKI. I think the Stafford Act is broadly written for a reason. I think a lot of it is interpretation although coordination with other agencies is very difficult because of Privacy Act concerns and sharing data.

One of the things we learned after Hurricane Katrina is that FEMA has their temporary housing program, but we also know that other Federal agencies have housing programs too. So FEMA may be duplicating with the HUD, U.S. Department of Agriculture (USDA), or Veterans Administration (VA) housing programs. But unless you are looking for specific data, it is just difficult to coordinate with other Federal agencies on that.

I think FEMA is doing a pretty good job. What they are responsible for under mission assignments is to task out activities to other agencies. For example, FEMA has an interagency agreement with HUD to administer the Disaster Housing Assistance Program.

And I really do not think they have a good handle on what HUD is doing on that. So there would be some coordination to determine whether FEMA getting the biggest bang for the buck on that, is it cost effective, is it performing as it is planned to perform for individuals to live independently.

So there are some issues there, but I think one of the biggest problems is that the Privacy Act makes it real difficult for Federal agencies to share information among themselves.

Senator PRYOR. OK. Well, we will work on that, and we will see if we can come up with some better language and a better Section 312.

Let me ask you again, Mr. Jadacki. I do not know if you heard the testimony earlier, but I was asking the previous panel about FEMA's identification of $160,000 erroneous payments, or at least potentially that many. What percentage of those do you think, based on your expertise and experience might be fraud?

Mr. JADACKI. It is hard to put a number on that. I mean you have to go through each of them. I think because FEMA dropped a lot of controls I think there is going to be a higher instance of fraud in these particular examples from Hurricanes Katrina and Rita than we do normally see in a disaster.

I know the Department of Justice was very aggressive right after Hurricane Katrina by establishing the Hurricane Katrina Fraud Task Force which has now been converted to the National Center for Disaster Fraud, and it continued to have individuals being prosecuted for very small amounts, like $2,000 here and there, and up to several hundred thousand dollars.

So it is higher than I have seen, but putting a number on the $160,000 is very difficult. I would expect it would be higher than other disasters, but I just do not know how many it would be.

If you are interested, I know DOJ published a 5-year anniversary of their work they did on the Hurricane Katrina Fraud Task Force, and that identifies all the convictions, indictments, restitutions. It is a pretty interesting document, to give you some sort of sense of the activity down there.

Senator PRYOR. If we can get that, that would be great.

And I guess based on what you just said it is fairly safe to say that if FEMA does not have the right controls in place it almost encourage fraud, or you are going to see a higher incidence of it.

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Mr. JADACKI. Yes. We issued a report a couple years ago that discussed where claimants could apply for assistance online or apply for assistance by phone. If you apply for assistance by phone, some of the controls are dropped—basically, Social Security numbers. And we actually found Social Security numbers, 123–45–6789, some of those types of examples, and they were paid checks.

Senator PRYOR. Yes.

Mr. JADACKI. And we saw sequential ones too if you applied online.

So we said, this does not make any sense; FEMA needs to do the basic checks on those claims.

So even something as simple as just doing a quick background check on Social Security numbers, and a lot of the information is open-source information. FEMA does not need to go to Social Security. They can go to ChoicePoint and some of those organizations that provide that. Accredited companies can provide that information for you.

Senator PRYOR. OK. Well, you mentioned a few moments ago that there were some prosecutions down to fairly small dollar amounts, $2,000, et cetera.

Mr. JADACKI. Yes.

Senator PRYOR. Do you have a sense of how much it costs the government to try to recoup this money?

Mr. JADACKI. It was a zero tolerance policy that the Department of Justice had down there. Working with U.S. attorneys for a number of years, and other agencies, it usually had to be a high dollar amount or some sort of sensitive issue before they would take the case.

One of the things they wanted to do is provide a deterrent. So prosecuting a $2,000 case may have cost money, but provides a deterrent when you put the people in handcuffs and on TV. That zero tolerance messages was one they wanted to send out: We are watching every single case no matter how small.

It is hard to measure how much a deterrent it is, but there was an increase in checks coming back to the Federal Government. When fraudsters see these types of cases, they realize that they might be next. So that was DOJ's goal.

I think they have raised the threshold now, but it is important to get out there early to show that we are checking. We may not get everybody, but the fact is you may be selected or you may be targeted. It is a big deterrent.

Senator PRYOR. Have you guys done any kind of analysis about how much it costs to try to recoup this?

I recall one of the previous panelists said that a lot of this is done by existing government personnel. Right?

Mr. JADACKI. Right.

Senator PRYOR. So I assume she might say that it does not cost anything because they are already there and they are working anyway.

Mr. JADACKI. Exactly.

Senator PRYOR. But then again, there are a lot of hours and a lot of resources that are devoted to this. So have you all done an analysis on that?

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Mr. JADACKI. We have not done an analysis, but I think it is important to recognize that it is part of the role of the Federal Government to have internal controls in place. And one of the internal controls is to actually review files and make sure payments are legitimate, even on a sampling type basis.

But the fact is these internal control checks are identified by law. FEMA must review improper payments when FEMA sends a 44-cent envelop out to an improper payment recipient they may get a certain percentage of the money back or not. But at least it starts a process, and then they can make a determination whether it is worth pursuing or not.

Somebody may say oh, I have been waiting for 10 years for you guys to come and recoup this money that I have in my bank. I am going to send it back to you.

But in other cases, if it is going to result in prolonged litigation, it may not be cost effective to pursue.

Senator PRYOR. OK. I do not know if this is the right forum, but I would like to request that you both do that analysis and try to give us a sense of how much it costs to recoup this money. So again, if you want me to do it in a letter or if you want me to just ask for it here, I can, either way.

Mr. JADACKI. OK.

Senator PRYOR. We can talk about that.

Mr. JADACKI. Sure.

Senator PRYOR. But I do think that is important for us to know. I know everybody is trying to do the right thing, trying to recoup that should not have been paid out, but at some point you need to do some sort of cost-benefit analysis to see if it is worth really pursuing some of this, or see if there is a threshold there.

You have been great. I could ask more questions, and I may submit a few more followups for the record, but I really appreciate your attention to this and your work on this.

We will hold the record open for 2 weeks. I anticipate that we will have at least a couple of our Senators, maybe more, submit questions for the record, and we look forward to working with you on those.

So with that, what I would like to do is go ahead and adjourn this hearing but continue to work with you all in various capacities as we move forward. Thank you.

[Whereupon, at 11:29 a.m., the Subcommittee was adjourned.]

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APPENDIX

Statement of Senator Mark L. Pryor
Chairman, Subcommittee on Disaster Recovery and Intergovernmental Affairs Hearing
"PREVENTING IMPROPERLY PAID FEDERAL ASSISTANCE
IN THE AFTERMATH OF DISASTERS"
March 17, 2011

I want to start this hearing by acknowledging the ongoing fight to save lives in the wake of the one of the most deadly natural disasters in modern times. I know I speak for all of my colleagues when I say that we are holding up the thousands of Japanese citizens who have lost their lives, and the millions of Japanese people who have been impacted by this event in prayer. I am proud that American military and search and rescue resources are part of the global answer to the call to help Japan in its time of need.

I want to welcome our witnesses from the Federal Emergency Management Agency (FEMA), the Small Business Administration (SBA), the Inspector General's Offices of both agencies, as well as all of my colleagues and the visitors who have joined us at the first hearing of the Subcommittee on Disaster Recovery and Intergovernmental Affairs.

A recently released report by the United Nations showed that 2010 was one of the worst years on record for natural disasters, and that we are in an unusual period of frequently occurring disasters. As the United States Government prepares to meet the challenges that are sure to come, we must ensure that our response and recovery mechanisms are strong enough to handle catastrophes ranging from a hurricane in the Gulf of Mexico to a major earthquake in Arkansas.

Today we will discuss ways to prevent the Federal Government from making improper payments in the wake of disasters. The GAO has determined that improper payments by government agencies have risen from an estimated $20 billion at the turn of the century to approximately $125 billion in 2010. As we prepare our government to more effectively manage the increased number of disasters, it is absolutely critical that we simultaneously work to ensure that Federal Government resources are distributed more efficiently in their aftermath.

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Federal Agencies provide many types of assistance to disaster survivors including financial or cash assistance, which are payments directly to individuals. Providing cash assistance leaves any system vulnerable to error and fraud. During disasters, when needs are significant and immediate, it is even easier for mistakes and confusion to result in improper payments. We must find ways to make fewer erroneous payments.

FEMA provides significant disaster assistance to individuals and families through its Individuals and Households Program (IHP). IHP assists disaster victims whose needs cannot be met through other forms of assistance, such as insurance or other federal programs. IHP grants may not exceed $29,900 per individual or household, and are usually limited to a period of 18 months. Since Hurricanes Katrina and Rita, FEMA disbursed more than $7 billion in IHP payments. A recent Department of Homeland Security Office of Inspector General (DHS OIG) review of FEMA's Fraud Prevention and Investigation Branch revealed that the agency distributed improper or erroneous disaster assistance payments totaling $643 million among 160,000 applicants in the aftermath of Hurricanes Katrina and Rita. Let me make it clear, we are not out to vilify disaster victims, or to subject those who have already suffered unimaginably to harsh debt collection efforts. In fact, many of the errors we seek to identify were due to mistakes or inefficiencies by federal agencies. We will examine how these mistakes happened, the steps FEMA is taking to recoup the funds, and OIG recommendations for ensuring this does not happen again.

FEMA announced improvements to its recoupment programs over the past few days. I intend to ask them a number of questions about the newly implemented programs.

FEMA is not the only Federal agency charged with delivering assistance during disasters. The Department of Housing and Urban Development (HUD), delivers disaster assistance Community Development Block Grant (CDBG) funds to impacted communities and directly to individuals, and also administers the Disaster Housing Assistance Program (DHAP), through an interagency agreement with FEMA. HUD's role in disasters has increased dramatically over the past two decades. More than $30 billion in HUD's CDBG program has been used since 1992 to provide flexible Federal funds to support States and/or local governments during long-term recoveries.

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Disaster CDBG funds are normally appropriated through disaster supplemental appropriations bills. Consequently, the CDBG Disaster Recovery program has operated without established program rules, properly developed systems, or adequate staffing. We intended to ask HUD about the spending controls of both CDBG and DHAP, but HUD was unable to send anyone from the Department to attend the hearing despite testimony being requested well in advance. Officials from the Department have promised to send the Assistants Secretaries of its Public and Indian Housing and Community Planning and Development Offices to testify on this subject in the coming weeks.

In addition to FEMA and HUD, SBA also plays a large role in disaster assistance through its Disaster Loan Program. The Program provides Home Disaster Loans, Business Disaster Loans, Economic Injury Disaster Loans (EIDL), and Pre-Disaster Mitigation Loans, but approximately 80% of the agency's disaster loans help individuals repair and replace homes and personal property. SBA regulations limit home loans to $200,000 for the repair or replacement of real estate and $40,000 for the repair or replacement of personal property. Since 1953, SBA has approved roughly 1.9 million disaster loans for a total of more than $47 billion. We intend to ask SBA how many of its loans end up in default and to inquire as to how the agency goes about collecting the debt. We will also ask the SBA OIG what recommendations it can make to FEMA about improving it recoupment capacity, since SBA, by virtue of dealing with loans, is better equipped than FEMA to recoup money.

As the catastrophe in Japan reminds us, we never know when disaster might strike. While we do not have the power of foresight, we must prepare our people and our government to deal with disasters when they occur. Disaster assistance must be provided in a way that ensures that people get what they need to rebuild their lives, but we must also ensure that tax payer dollars are delivered wisely and efficiently. I hope today's hearing will provide more ideas as to how best to do both.

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Preventing Improperly Paid Federal Assistance in the Aftermath of Disasters
Subcommittee on Disaster Recovery & Intergovernmental Affairs
March 17, 2011
Opening Statement by Senator Mary Landrieu

Thank you, Chairman Pryor and Ranking Member Ensign, for calling this important and timely hearing on recoupment of federal disaster assistance.

We have a serious responsibility to curb government waste, fraud, and abuse, reduce the federal deficit, and reign in the national debt. Recoupment of improper payments is an important part of that effort. It's important however that we not rush to judgment in condemning our fellow citizens who have experienced tragedy and loss as a result of disasters.

Where fraud has been committed, we will target and prosecute it. I cosponsored The Emergency and Disaster Assistance Fraud Penalty Enhancement Act with Senator Sessions, which was signed into law in 2007 and significantly increased prison sentences and fines for people convicted of fraudulently obtaining federal disaster assistance. The Justice Department has established a Hurricane Fraud Task Force to investigate, prosecute, and secure thousands of convictions under these new sentencing guidelines.

But there is a dangerous tendency among some lawmakers and members of the press to assume that an "improper payment" is the same thing as fraud. Neither FEMA nor the Inspector General has been able to provide me with an estimate of how many of these 160,000 cases represent fraud. But we do know that thousands of the payments described as "improper" by the Department of Homeland Security Inspector General, went to people who were seriously affected by the disaster and used for urgent and legitimate needs.

In order to provide a fuller picture of who and what we're dealing with, I'd like to go through some examples of "improper payments" that are subject to recoupment.

1) People who lost the Title to their home or insurance documents during the flooding
2) People who can't provide a free-and-clear title because their home has been in the family for several generations
3) People who own homes where their children or parents live separately from them
4) People who used funds to pay for child care expenses
5) People being targeted because of data entry errors by FEMA employees, including bank account numbers, addresses, and social security numbers
6) People being targeted because of mix-ups or omissions of name suffixes like Jr. or Sr. or street suffixes like Blvd., Drive, or Hwy.
7) People who received rental payments in excess of HUD's Fair Market Value for the area, even if they spent all of the funds on rental expenses (which spiked after the hurricanes due to decreased supply)
8) People who -
    a. followed evacuation orders to escape the flooding
    b. left behind medicine, clothing, and groceries

c. used government-issued debit cards to replace these materials while they were displaced
d. and who later returned to their neighborhoods and found minimal damage to their home

9) People who used funds for clothing, food, medicine, or transportation, but who were displaced for so long that they exceeded their maximum allowance under the program

These examples reveal the fact that many of the families facing recoupment are honest disaster survivors, facing incredible challenges, who never intended to misuse funds or accept money to which they were not entitled. It's noteworthy that $18 million of the funds in question were reported to FEMA by the disaster survivors themselves after they received duplicative insurance payments.

There is also a blanket assumption that recoupment of improper payments will save the federal government money. I am not entirely convinced that is true in this instance, and here's why. Neither FEMA nor the Inspector General seem to have any data available on the relative benefits and costs of previous recoupment efforts. Nor have they indicated whether they plan to measure the cost-effectiveness of recoupment going forward. I would invite the witnesses to address these issues in their testimony. Finally, I look forward to learning about the steps FEMA has taken to prevent future improper payments, and the potential impact, of House-passed spending cuts, on the IT systems that protect against fraud.

I thank the Chairman and Ranking Member for their leadership, and I look forward to the witnesses' testimony and the opportunity to ask questions about these important issues. Thank you.

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]

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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.

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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

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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

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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.

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[2] OIG-09-110.
[3] OIG-09-110.

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U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

TESTIMONY OF MICHAEL A. CHODOS

DEPUTY GENERAL COUNSEL,
U.S. SMALL BUSINESS ADMINISTRATION

BEFORE THE SENATE HOMELAND SECURITY AND GOVERNMENT AFFAIRS,
AD HOC SUBCOMMITTEE ON DISASTER RECOVERY AND INTERGOVERNMENTAL AFFAIRS

"PREVENTING IMPROPERLY PAID FEDERAL ASSISTANCE IN THE AFTERMATH OF DISASTERS"

MARCH 17, 2011

Good morning Chairman Pryor, Ranking Member Ensign, and distinguished Members of the Subcommittee. My name is Michael A. Chodos, Deputy General Counsel at the Small Business Administration (SBA). It is an honor to appear before you today on behalf of SBA to discuss the safeguards in place at SBA to identify improper payments and prevent duplication of benefits (DOBs).

The SBA takes its on-going responsibility to guard against and to prevent waste, fraud and abuse in its programs very seriously. Maintaining the integrity and accountability of our programs is critical. To that end, we appreciate the role that the Office of Inspector General (OIG) plays in assisting management to ensure that our programs are effectively managed. Ensuring that proper controls are in place is crucial to the Agency's ability to implement and administer its programs in an environment that eliminates fraud, waste and abuse.

During this Administration, SBA and the OIG have made significant strides in terms of collaboration and cooperation. We believe the OIG reports that the Subcommittee is examining today are excellent examples of the progress that has been made over the past two years. By and large, SBA agreed with the OIG's recommendations in these reports, and we have taken steps to implement them. Let me describe just a few of the most significant changes we have made.

Improper Payments

The Office of Disaster Assistance (ODA), in an effort to prevent improper payments, revised the sampling design methodology for estimating improper payments. Through the Chief Financial Officer's office, ODA contracted with a statistician to review the process and revise the sampling design methodology in accordance with OMB guidance.

Shortly after the OIG issued its report, SBA also re-engineered the Quality Control (QC) process. Previously, the QC process was performed by a group of employees working at the Processing and Disbursement Center (PDC) who reported to the same management team that was responsible for the loan origination. Although the QC department remains housed at the PDC in

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Fort Worth, Texas, they now report directly to the Director of Program Policy and Evaluation in Headquarters.

The QC department is responsible for conducting the Improper (Erroneous) Payment Review (IPR). These IPRs are completed on a semi-annual basis. The files are randomly selected using a formula engineered by an outside statistician. The number of files reviewed is based on the volume of activity for the period being reviewed. The final IPR findings are included in the Agency's annual report. The completion of these IPRs and the annual report allows corrective actions to be implemented, and for Agency management to evaluate the impact of the corrective action, in a timely manner.

Managers are vital to the Agency's success in reducing improper payments and are held accountable through the performance review process. The PDC has also adopted a series of measures, including ongoing training, to ensure awareness of what constitutes an improper payment. The managers are directly responsible for implementation of measures to reduce improper payments and monitor its adherence on a day-to-day basis.

Insurance Offsets

As part of our ongoing effort to ensure that applicable insurance payments are identified and properly offset against an individual's verified loss, we have revised SBA Standard Operating Procedure 50 30 (SOP) to clarify the requirement that we "determine that all DOBs (e.g., FEMA, State and local grants, insurance, etc.) have been addressed" before final disbursement. The SOP change will be formally incorporated in the SOP in the next update cycle. In addition, SBA issued a "Numbered Director's Memorandum" outlining the SOP change and reinforcing the need to address all insurance recoveries prior to all loan disbursements. The PDC training materials and course content were also updated to address the clarifications, as well as the need for clear documentation of contact with insurance carriers to confirm insurance payments.

SBA has also taken steps to identify and resolve loans with duplicate benefits. For example, we continually review the portfolio to confirm and address insurance recoveries. An additional safeguard in preventing insurance DOBs is the assignment of insurance proceeds. Borrowers are required to sign the assignment of insurance proceeds, which authorizes future insurance recoveries to be paid to SBA. ODA and the SBA's Office of Financial Assistance also work together to determine the universe of loans requiring follow-up for re-verifying insurance recoveries.

SBA and the Federal Emergency Management Agency (FEMA)

SBA and FEMA have consistently worked together in order to effectively provide assistance to disaster victims and reduce possible DOBs. SBA and FEMA implemented and maintain internal agency agreements, which allow SBA and FEMA to continually exchange data electronically. The data exchanges are important tools that provide improved disaster assistance to victims such as verifying DOB information, accelerating referrals to SBA and providing SBA loan application status updates.

For example, in accordance with the inter-agency agreement, FEMA grant award amounts are automatically downloaded into the Disaster Credit Management System (DCMS) – SBA's loan

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processing system. This allows ODA to verify potential duplicate benefits during the application and disbursement phases of the loan process. Additionally, SBA employees who process loans and approve disbursements have access to FEMA's National Emergency Management Information System in order to verify DOBs in real time.

Declined SBA applicants referred to the FEMA Other Needs Assistance (ONA) grant program who are subsequently approved by SBA are required to use loan proceeds to repay the amount of the ONA grant. This is another DOB safeguard in place as a result of coordination between the agencies.

Finally, SBA's Office of Disaster Assistance Senior Leadership and FEMA's Response and Recovery management teams have initiated quarterly meetings to discuss ways to enhance the delivery sequence process and provide better assistance to disaster victims.

While SBA is pleased with the progress it has made to eliminate improper payments and work more closely with other agencies like FEMA, we recognize that additional work remains. As hurricane season approaches, SBA is well aware of the important role it plays in the lives of disaster victims. We are also well aware of our role as a steward for taxpayer funds. With the changes implemented thus far, SBA is confident that it will be able to carry out both roles efficiently and effectively.

Thank you and I am happy to take your questions.

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Testimony of the U.S. Small Business Administration Inspector General, Peggy E. Gustafson, Before the Senate Ad Hoc Subcommittee on Disaster Recovery and Intergovernmental Affairs (March 17, 2011)

Chairman Pryor, Ranking Member Ensign, and distinguished members of the Subcommittee, thank you for this opportunity to testify.

As the Inspector General for the Small Business Administration, I head an independent office established to deter and detect waste, fraud, abuse and inefficiencies in SBA programs and operations. My testimony today focuses on several audits my office recently conducted regarding duplicate benefits in the SBA disaster loan program. This program provides low-interest, long-term loans for physical damage to homes and businesses caused by a disaster.

Under SBA's disaster loan program, borrowers are not entitled to obtain loans for losses covered by insurance, grants and other sources. SBA enforces this restriction on duplication of benefits, which I will occasionally refer to as DOB, by either reducing the amount of the loan that a borrower can obtain by any duplicate benefits at the time of loan processing, closing or disbursing, or by requiring borrowers that have received disaster loans, and the loan is in a servicing stage, to assign any insurance benefits they receive to SBA to pay down the balance of their loans.

A proper DOB analysis minimizes risk to SBA and benefits the Disaster program in several ways: First, a DOB analysis should reduce the overall outstanding debt owed to the Government by reducing the amount of loans made. This, in turn, reduces the cost to the taxpayer because disaster loans are taxpayer subsidized. Second, the DOB analysis maximizes the impact of Federal disaster funds by directing those funds away from losses that are compensated by insurance and other benefits, and towards disaster victim needs.

The SBA OIG recently conducted three audits that reviewed the effectiveness of SBA's decisions to reduce duplicate benefits in the disaster loan program. The most recent audit, completed in February 2011, determined whether disaster servicing centers had adequate and effective systems for processing insurance recovery checks to avoid a duplication of benefits. The other two audits, completed in October 2009, and July 2009, determined whether SBA was adequately checking for insurance benefits when it was processing and disbursing Gulf Coast Disaster Loans and Disaster Loans for the Midwest Floods of 2008, respectively.

The February 2011 audit found that SBA did not have effective procedures in place to avoid duplicate benefits when it received checks for borrowers from insurance companies. In fact, one SBA servicing center made inaccurate DOB decisions approximately 47 percent of the time by sending the checks on to the borrowers rather than using the money to pay down the loan; a second center erred on 23 percent of its DOB decisions regarding insurance checks. Projecting our sample to the entire universe of checks the two centers processed in fiscal years 2008 and 2009, we estimate that SBA erroneously returned more than 4.1 million dollars in duplicate benefits to the borrowers.

The good news is that SBA agreed with our recommendations and is now working to implement corrective action. For example, the Agency has now designated and trained staff in servicing centers to assess whether insurance checks they receive represent duplicate benefits and has taken steps to ensure that information related to the DOB analysis is captured in SBA records. SBA has also worked to improve its communication with insurance companies and other agencies that provide disaster assistance. Additionally, SBA is in the process of attempting to recover the duplicate benefits from the borrowers.

The audits we conducted in 2009 also identified errors in SBA's DOB analysis. The majority of the errors occurred because loan officers did not check with insurance companies to determine the amount of insurance that had been paid prior to disbursing the disaster loans, as they were required to do. In response to our audits, SBA undertook procedural changes to improve its DOB determinations. As one such change, in response to the Gulf Coast Disaster Loan audit, SBA began checking for duplicate benefits between six months and one year after the final disbursement of a disaster loan.

In summary, SBA – and, indeed, all agencies that provide disaster assistance -- must exercise diligence and must develop effective internal controls to ensure that recipients of Federal assistance do not obtain duplicate benefits.

Thank you for the opportunity to testify on this important topic, and I would be happy to answer any questions.

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Good morning, Mr. Chairman and Members of the Committee. I am Matt Jadacki, Assistant Inspector General for Emergency Management Oversight for the Department of Homeland Security. Thank you for the opportunity to discuss the efforts the Federal Emergency Management Agency (FEMA) has made to recoup improper payments and prevent and deter fraud, waste, and abuse.

Improper payments have been a growing problem for the federal government. Reported improper payments by government agencies have increased significantly from an estimated $20 billion in 2000 to approximately $125 billion in 2010. The Congress and the President have brought increased attention to this issue. The Improper Payments Elimination and Recovery Act of 2010 has focused agencies' attention not only toward identifying programs vulnerable to improper payments and estimating the annual error rate of such programs, as called for by the Improper Payments Information Act of 2002, but requiring the agencies to: 1) determine the causes of such improper payments; 2) describe the actions taken or planned to correct these causes; and 3) report the actions taken to recover the improper payments.

A March 2010 Presidential memorandum, *Finding and Recapturing Improper Payments*, states that Executive departments and agencies should use every tool available to identify and reclaim funds associated with improper payments.

Improper Payments in FEMA

Since hurricanes Katrina and Rita, FEMA has disbursed more than $7 billion dollars in disaster assistance payments under its Individuals and Households Program (IHP). This program provides disaster survivors with financial assistance for temporary housing, home repair, and other needs, such as transportation, moving, and storage expenses.

Last summer, we began a review of FEMA's fraud prevention efforts. During our field work, we learned that FEMA was not attempting to recoup 160,000 individual cases of potentially improper IHP payments totaling approximately $643 million following hurricanes Katrina and Rita and subsequent disasters.

Many factors resulted in these improper payments. Because of the high volume of applicants following hurricanes Katrina and Rita, FEMA turned off many of its system controls in order to process registrations in a timely manner, allowing thousands of cases of fraudulent and improper payments to occur. Some applicants used vacant lots, post office boxes, and cemeteries as their damaged property address. Others received payments for property damage based on falsified rental agreements with addresses in the damaged area. FEMA also made improper payments based on multiple registrations with the same disaster-damaged addresses.

Staff did not have time to interview all applicants or inspect damaged property prior to providing assistance. In some cases, human error led to improper payments. For example, caseworkers entered incorrect banking information into the National

Emergency Management Information System, resulting in receipt of assistance by non-applicants. In some cases, the applicant's insurance covered the damage or a secondary residence was damaged, thus making the applicant ineligible for assistance. In many cases the applicant was unaware of eligibility rules and the FEMA caseworker did not collect all the necessary information to make a proper determination.

These improper payments were discovered in various ways. Some resulted from audits by our office and the Government Accountability Office. Tips were received by various fraud hotlines from neighbors, as well as federal, state, and local officials. FEMA's Fraud Prevention and Investigation Branch uncovered cases through data mining and calls from law enforcement officers. Still others were found by FEMA staff during reviews of applicant files when assistance needed to be extended or an applicant applied for a second type of assistance.

Of the $643 million in identified improper IHP payments, $621.6 million was paid in response to hurricanes Katrina and Rita, and $21.7 million in response to subsequent disasters. When recoupment begins, FEMA intends to attempt to recoup the newest debt first.

Locating recipients and collecting the improper payments from them may be difficult. Most of the debt is several years old, the money has probably been spent, people have moved, and many recipients may be struggling economically. FEMA officials are concerned with the negative publicity restarting the recoupment process will engender. The Office of Management and Budget has reminded FEMA that the agency is required to pursue the improper payments pursuant to the Debt Collection Act of 1982, as amended.[1] The law also requires FEMA to transfer the debt to the Secretary of the Treasury for collection if the debt is delinquent for more than 180 days.[2]

FEMA Plans New Recoupment Process

In June 2007, as a result of a lawsuit[3] challenging, among other things, FEMA's recoupment of some disaster assistance payments following hurricanes Katrina and Rita, a federal district court judge issued an injunction, ordering FEMA to discontinue its debt collection activities until certain changes were made in its recoupment process. FEMA was prohibited from terminating or discontinuing assistance without advance written notice of the reasons for terminating or discontinuing assistance and was required to notify the parties of their right to appeal FEMA's decisions. The same year, the Department of Homeland Security promulgated department-wide debt collection standards which superseded FEMA's process.

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[1] 31 U.S.C. § 3711(a)
[2] 31 U.S.C. § 3711(g)(1)
[3] *Ridgely v. FEMA*, 2007 U.S. Dist. LEXIS 43002 (E.D. La. June 13, 2007).

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FEMA complied with the injunction and halted all recoupment activities. FEMA announced in a 2008 Federal Register notice[4] that:

- Recoupment notices previously sent to individuals were withdrawn;
- The debts were not cancelled; only the former debt collection procedure was terminated;
- All individual cases would be reexamined *de novo* for evidence of overpayment; and
- New recoupment proceedings would be instituted, where warranted, pursuant to the Department's new regulation for the collection of debts.

FEMA's Office of Chief Counsel, in cooperation with the Individual Assistance Office and the FEMA Finance Center, developed a new recoupment process, which has been awaiting approval from the FEMA Administrator since 2008. FEMA personnel are prepared to begin the recoupment process upon instruction from the Administrator.[5] In November 2010, the Texas National Processing Service Center began the *de novo* reexamination of approximately 160,000 cases.

If the review results in a finding that the payment was in fact proper, the FEMA Finance Center records will be revised and any portion of the debt paid to date will be reimbursed. However, if the reexamination results in a finding that the original payment was improper, a Notice of Debt will be sent to the applicant, advising them of: 1) the amount of the debt owed; 2) the reason(s) why the original payment was improper; and 3) his or her right to appeal FEMA's determination within sixty days. Instructions are provided to the applicant regarding the appeal procedure.

The applicant may request a "paper" hearing and provide documentation to the National Processing Service Center to prove the validity of the payment, or the applicant may request an oral hearing (generally to be accomplished via a telephone call) with an Alternative Dispute Resolution official in FEMA's Office of Chief Counsel. The hearings will form the basis of a Final Agency Determination. If the determination is that no debt is owed, the FEMA Finance Center will be notified of that determination and if the applicant has previously made a partial or full payment, the payment is reimbursed.

If the applicant fails to appeal within sixty days of receipt of the Notice of Debt, or the determination of the hearing is that the debt is owed, the FEMA Finance Center will send a Letter of Intent to the applicant. This Letter notifies the individual that FEMA is now taking further action to collect the debt.

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[4] 73 Fed. Reg., 51831, 51832 (Sept. 5, 2008).

[5] The injunction was dissolved in 2009 (*Ridgely, et al. V. FEMA*, et al., E.D. La. 2:07-cv-02146-HGB-ALC (2009)).

The applicant may make the required payment or call the FEMA Finance Center to: 1) negotiate a payment plan; or 2) request a compromise or waiver of part or all of the debt, based on their inability to pay.[6] If repayment of the debt is not resolved, FEMA forwards the debt to the Department of the Treasury's Financial Management Service for collection.

Future Improper Payment Audit Planned

FEMA has several programs that are considered high risk for significant amounts of improper payments. In the Department of Homeland Security FY2010 Annual Financial Report, FEMA was projected to disburse $186 million in improper payments in FY2010, $163 million in FY2011, and $140 million in FY2012. We plan to review FEMA's high risk programs and report on the actions FEMA is taking to decrease the error rate and dollar value of improper payments associated with these programs.

Fraud Prevention Efforts

It has been well documented that FEMA's disaster assistance programs are susceptible to fraud, waste, and abuse. In 2006, the Government Accountability Office reported improper and potentially fraudulent individual assistance payments between $600 million and $1.4 billion to applicants who used invalid information to apply for disaster assistance after hurricanes Katrina and Rita.

FEMA made improvements in internal controls after hurricanes Katrina and Rita and prior to hurricanes Ike and Gustav, which resulted in significant decreases in duplicate, improper, and potentially fraudulent registrations receiving payments. For example, payments for 380,000 duplicate damaged addresses were made following hurricanes Katrina and Rita, but only 4,400 such payments were made following Hurricane Gustav. Payments were made to 700 registrants with invalid Social Security numbers after hurricanes Katrina and Rita, but only 2 such registrants received assistance after Hurricane Gustav. Leading reasons for this improvement include multiple tests by a contractor to check the validity of all registrations for IHP assistance, and in-person inspection of every damaged property to validate damage, occupancy, and ownership.[7]

The Post-Katrina Emergency Management Reform Act of 2006 calls on the FEMA Administrator to ensure that all programs within the agency administering federal disaster relief assistance develop and maintain proper internal management controls to prevent and detect fraud, waste, and abuse. The Act further requires the Administrator to develop

[6] Agencies may compromise a debt if the Government cannot collect the full amount because: (1) The debtor is unable to pay the full amount in a reasonable time...; (2) The government is unable to collect the debt in full within a reasonable time by enforced collection proceedings; (3) The cost of collecting the debt does not justify the enforced collection of the full amount; or (4) There is significant doubt concerning the Government's ability to prove its case in court. 31 C.F.R § 902.2(a). Subject to certain exceptions, if a debt is canceled or forgiven, it must be included in gross income for tax purposes. If a federal government agency cancels or forgives a debt of $600 or more, the agency will issue a Form 1099-C.

[7] *Improvements to Internal Controls for FEMA's Individuals and Households Program Registration Process* (Redacted), OIG-09-110, September 2009.

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and implement a program to provide training on the prevention of fraud, waste, and abuse of federal disaster relief assistance relating to the response to or recovery from natural disasters.

We will soon be issuing a report on FEMA's fraud prevention efforts. After a series of hurricanes struck Florida in 2004, the Florida recovery office established a fraud prevention office, now called the Fraud Prevention and Investigation Branch. This office has referred cases of potential fraud to the DHS Office of Inspector General, and has stopped disbursements of assistance to ineligible recipients. However, the office's physical location in Florida, limited resources and authority, distance from the Office of the Administrator, and a general lack of awareness of its existence throughout FEMA, has restricted its ability to detect and prevent fraud.

It is critical that FEMA employees assist disaster survivors as promptly as possible, but FEMA also needs to ensure the assistance is provided only to eligible recipients and in the proper amounts. We believe that the required fraud prevention training program, which has not yet been instituted, will help to raise fraud prevention awareness throughout the agency and lead to increases in the prevention, detection, and deterrence of waste, fraud, and abuse. FEMA also needs to begin the recoupment process, as required by law, to return taxpayer dollars that were improperly provided. Further delay will only make these aging debts more difficult to collect.

Mr. Chairman, this concludes my prepared remarks. I would be happy to answer any questions you or the Committee members may have.

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Post-Hearing Questions for the Record
Elizabeth Zimmerman, Deputy Associate Administrator, FEMA
From Senator Mark Pryor

"Preventing Improperly Paid Federal Assistance in the Aftermath of Disasters"
March 17, 2011

1. The DHS OIG testimony mentions that several of FEMA's programs are at high risk for significant amounts of improper payments, and that there were $186 million in improper payments in 2010, are likely to be about $163 million in 2011, and another $140 million in 2012.

a. If FEMA programs are projected to leak nearly a quarter of a billion dollars over the next two years, how confident are you that FEMA will not have a rate of improper payments similar to that of Katina, should a catastrophic even the size of Katrina take place?

b. What programs have identified as being most at risk?

Response: FEMA has worked diligently to develop new processes in order to improve the identification, reduction, and recovery of improper payments disbursed to federal disaster assistance applicants. While the current cases identified for recoupment represent a significant amount of improper or potentially improper assistance, FEMA has made significant strides in reducing the incidence of overpayment since Katrina, and is far better positioned to prevent future errors in disaster assistance.

First, FEMA now has the ability to validate the identity of individuals who register for assistance through electronic data verification prior to receiving any Individuals and Households Program (IHP) financial assistance. This verification is performed along with automated checks of applicant occupancy and ownership during the application process through LexisNexis. Therefore, identity, occupancy and ownership verification checks are now being conducted electronically during the application process prior to any assistance being distributed to an applicant.

Second, FEMA has focused on the increased prevention of improper payments by developing new information management procedures in our National Processing Service Centers (NPSCs). The NPSCs have worked with the Office of Chief Information Officer to improve the National Emergency Management Information System (NEMIS) software used to process applications for disaster assistance. These actions include:

- Using identity and occupancy verification checks to prevent automated payments to applicants who may have used a fraudulent name, SSN or address;
- Flagging "high risk" addresses such as check cashing stores, mail drops, cemeteries, and jails to block them from receiving automated payments;
- Blocking duplicative rental assistance payments for overlapping months or payments over the IHP maximum;

- Stopping duplicative registrations over the Internet to prevent duplicate payments to the same applicant;

- Improving the NEMIS business rules to prevent duplicate payments to applicants at the same address; and

- Adding a NEMIS direct assistance module to track individuals in mobile homes or travel trailers in order to prevent the provision of financial rental assistance to applicants who were already housed by FEMA.

Third, FEMA has focused on the increased prevention of improper payments by instituting organizational changes which have further contributed to the decreased error rate:

- FEMA Headquarters established the IHP Assistance Group in 2008 at the NPSCs to provide clear, consistent and timely guidance regarding IHP policies and case processing procedures in order to reduce case processing errors, improve operational efficiency and overall delivery of service.

- The NPSCs have established specialized teams of employees referred to as Specialized Processing Groups dedicated to the processing of some of the more difficult cases, such as appeals and recoupments.

- The NPSCs have expanded the Quality Control group to include reviews of special projects and new case processing procedures. This has enabled the NPSCs to rapidly identify problems with projects and new processing guidelines and take remedial action as necessary.

- The NPSCs have 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.

- The NPSCs have 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.

The combination of these improvements has resulted in a reduction of the error rate in financial assistance from 14.53% following Hurricanes Katrina and Rita to 2.72% in FY 2009. FEMA continues to work to reduce this number further; however, these factors have significantly reduced the potential for recoupment in disasters since Hurricanes Katrina and Rita and will continue to do so in future disasters.

The OCFO Risk Management Branch does annual Risk Assessments of all FEMA programs. FEMA's programs that have been deemed susceptible to improper payments are as follows (in no particular order):

Disaster Relief Fund – Vendor Payments
Homeland Security Grants Program

Transit Security Grants Program
Emergency Food and Shelter Program
Public Assistance Program
Assistance to Firefighter Grants Program
Individuals & Households Payments
National Flood Insurance Program

Port Security Grants Program is not considered a High Risk Program but will be tested this Fiscal Year due to disbursements made in FY 2010 under American Recovery and Reinvestment Act.

NOTE: The programs are not listed according to their risk. No program is of higher risk than the others. Each program is different and has different circumstances.

2. In the DHS OIG's testimony, the OIG praises FEMA's Fraud Prevention and Investigation Branch as the sort of practice FEMA can take at the front end to prevent improper payments from taking place. However, the OIG expresses concern that the division is located in Florida far from the headquarters where it can be more effectively integrated in to the agency.

a. Does FEMA have any plan to relocate this branch to the headquarters in Washington, DC?
b. Do you have any information on the size of that staff?
c. Has FEMA requested to increase the size of the branch to cover more ground?

Response: FEMA's Fraud Prevention and Investigation Branch is currently located in the National Capital Region as part of the Office of Chief Security Office (OCSO).

Currently there are nine positions in the Fraud Unit, two of which are vacant. Earlier this month, the Administrator tasked OCSO to immediately develop a plan for expanding the unit and we are developing that plan.

In FY10, the Fraud Unit accomplished the following:

- Conducted 464 investigations/reviews of FEMA fraud complaints,
- Submitted $2.2 million for recoupment of fraudulent or improper payments,
- Prevented/protected improper disbursement of $137k,
- Presented at the Government Accountability Conference in Washington, DC on FEMA's Fraud Prevention and Detection Efforts,
- Presented at the DHS OIG leadership conference in Dallas, TX on FEMA's Fraud Prevention and Detection Efforts and cooperative investigative initiatives,
- Provided FEMA fraud awareness training to personnel from the Office of the Chief Security Officer, Gulf Coast Recovery and Office of External Affairs, and

Provided assistance and training to FEMA's Disaster Assistance Improvement Program, Office of the Chief Information Officer, staff of the Recovery Directorate and Internal Control Program Fraud Prevention Working Group on FEMA fraud detection and proposed internal controls to FEMA Programs and IT systems.

3. What, if any, regulations or statutes should be amended to establish a clearer framework for the delivery of federal disaster assistance?

   Response: FEMA looks forward to working with Congress on any recommended statutory changes to our authorities. However, we feel we currently have the necessary tools in statute to provide services to disaster victims. As for any regulatory changes, FEMA would publish a notice of proposed rulemaking allowing the public to comment on any proposed changes to our regulations. FEMA would address these comments in any final rulemaking.

4. On March 25, 2011, FEMA sent "Notice of Debt" letters to 35 Arkansas residents indicating that they were liable to payback FEMA assistance that was disbursed to them erroneously. These letters were sent to some 160,000 individuals or households that FEMA has determined are ineligible for disaster assistance dollars previously awarded to them. Individuals could receive these letters for a variety of reasons including duplication of benefits, receipt of over-payment, or unverifiable US citizenship. Among the most troublesome is a determination by FEMA that an individual or household is in what is referred to as a "sanctioned community," meaning a community that does not participate in the national flood insurance program under the National Flood Insurance Act of 1968.

   In four of the 35 active recoupment cases being carried out in Arkansas, Arkansans are being asked to repay disaster assistance funds that they received several years ago. In the case of the "sanctioned community" determination, these Arkansans followed all the rules, submitted all documentation, and allowed the completion of the detailed FEMA inspection to verify damages. However, they have recently received correspondence indicating that they must repay the funds. In these cases, this recent letter from FEMA is the first correspondence they have ever received indicating that they have been deemed ineligible for the assistance received nearly three years ago. Essentially, three years later, FEMA is telling these Arkansans that they need to repay funds because the agency just realized it never should have paid it in the first place, in no part due to the actions of the disaster survivor.

   In one case, a 73 year old woman named Dorothy C. Guglielmana received a letter from FEMA informing her that she must repay $27,251.83 within the next 30 days or face significant interest payments. This is an unacceptable way to treat disaster survivors who have followed the rules.

a. How many of the 160,000 recoupment cases currently underway, are based on the "sanctioned community" determination?
b. Can you provide a detailed explanation as to how these payments were allowed to be processed by FEMA during the original application submission? How were these individuals able to pass FEMA's inspection process and receive funding if they were ineligible?
c. What steps have FEMA taken recently to ensure that this type of error is prevented in the future?
d. How does FEMA intend to deal with people like Ms. Guglielmana, who will assuredly face significant financial difficult as a result of the agency's mistakes?

e. What changes, whether regulatory or statutory, do you believe should be made to prevent cases like these from taking place?

Response: 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. Additionally, FEMA must fulfill our legal responsibility to recover improperly disbursed funds.

FEMA continually strives to balance the need to be responsible stewards of taxpayer dollars through collection of improper payments with being mindful of the difficulties that the recoupment process might pose for individuals who may have received improper payments or overpayments.

If someone cannot pay the full amount, FEMA will work with him or her to set up a repayment plan. Federal regulations also provide that an individual may request a compromise of the debt based on inability to pay. 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 while ensuring that the Agency is an effective steward of taxpayer dollars.

Regarding the question concerning sanctioned communities, eighteen of the 5,560 recoupment actions initiated to date are based on the sanctioned community determination.

All but one of the 18 recoupment actions based on sanctioned community determinations were due to manual processing errors. Caseworkers reviewing requests for more assistance did not correctly review the sanctioned community status and paid the applicant in error.

In one case, NEMIS automatically processed a grant to an applicant in a sanctioned community. While that applicant was eligible for some assistance, NEMIS errantly awarded the full amount of damage recorded during the home inspection.

The automated process error was identified during an internal audit in 2010 and corrections were made to NEMIS in January 2011 to prevent further such errors.

The manual processing errors were identified during a 2010 internal audit. We have since provided notices to all casework staff to properly review the sanctioned community status of each case. Additionally, we are also in the process of instituting new controls within NEMIS to prevent manual processing errors and plan to include these new controls in the January 2012 NEMIS upgrade.

All applicants who owe a debt to FEMA have been sent a letter, which includes a document entitled FEMA Debt Resolution Process: In Summary (Summary). Please see attachment. The Summary explains the options and rights for the applicant pertaining to the debt. The options include the following:

1. Pay the amount in full;

2. Request a payment plan or a compromise of the debt; or,
3. File an appeal within 60 days.

If an applicant disagrees with the debt amount or the reason, he/she should take the necessary steps to appeal the debt. The Summary discusses the instructions for filing an appeal.

If an applicant believes he/she is not financially able to pay the debt in full or at all, he/she may request a payment plan or a compromise of the debt in full or in part. The Summary also discusses the instructions for these processes.

In addition, an applicant may contact the FEMA Recoupment Helpline at 1-800-816-1122, or TTY at 1-800-462-7585 for persons who are Deaf, Hard of Hearing or those with speech disabilities, between 9:00 AM and 8:00 PM EST, Monday through Friday if he/she needs any assistance with the above processes.

Establishing a Payment Plan/Compromise of the Debt
FEMA evaluates a debtor's request for a payment plan or compromise based on federal debt collection procedures. If a debtor is unable to pay the debt in one lump sum, they may request to enter into a Payment Plan -- an agreement to repay their debt in regular installments; or have their account reviewed for a Compromise of a portion or all of the debt. The first step in FEMAs Debt Resolution Process is gaining information from the Applicant regarding his or her ability to repay the debt. FEMA mails a Request for Information (RFI) packet to the debtor, to be completed and returned within 30 days for evaluation. The RFI packet includes FEMA form 127-0-1, Debt Collection Financial Statement executed under penalty of perjury, showing the debtor's assets, liabilities, income and expenses and a form to list current household expenses. In addition, the debtor must provide tax returns, bank statements, or alternate documentation to support their request. FEMA evaluates the financial information and uses IRS Collection Financial Standards in determining the debtor's ability to pay the debt.

If the evaluation shows that a debtor has insufficient disposable income and/or assets to pay the entire debt in one lump sum, FEMA may accept payment in regular installments. The size and frequency of the installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the debt in three years or less. FEMA obtains a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement.

If the evaluation indicates that the Applicant does not have sufficient net disposable income to repay the debt within a reasonable time or is unable to pay the debt at all, an Applicant will be considered for a compromise of the Debt – full or partial. A compromise is when FEMA accepts less than the full amount of the debt owed from the debtor in satisfaction of the debt based on the criteria in 31 CFR 902. Some factors that are considered include:

- Low income (e.g., social security is only form of income),
- A verifiable loss of income (e.g., loss of employment, reduction in monthly pay), or
- A verifiable increase in expenses since the time of the disaster (e.g., temporary or permanent disability, other extraordinary necessary expenses).
- Age and health of the debtor.

We do not believe any regulatory or statutory changes need to be made. These errors can be prevented through system controls we have already identified and have implemented.

Post-Hearing Questions for the Record
Submitted to Beth Zimmerman
From Senator Mary Landrieu

"Preventing Improperly Paid Federal Assistance in the Aftermath of Disasters"
March 17, 2011

1) Cost-Effectiveness

We have a responsibility to reduce the federal deficit and reign in the national debt, and recoupment of improper payments is part of that effort. But recoupment from disaster-affected households may not produce the same savings as curbing waste in defense contracting or rescinding unspent formula grants to states. FEMA is dealing with hundreds of thousands of low-dollar amounts, as opposed to a handful of high-dollar amounts. Putting aside the issues of fairness, which are not insignificant, we have a responsibility to use common sense as we go about recouping funds, to ensure that we don't expend more than we collect at the end of the day. I have asked both FEMA and the Inspector General to provide information about the cost-effectiveness of previous recoupment efforts, but neither of them seem to have measured this in the past. Without any system in place to measure and compare the benefits and costs of recoupment, we run the ironic and very real risk of *wasting* rather than saving taxpayer funds.

- How will FEMA and the Inspector General measure the cost-effectiveness of this effort?
- What will FEMA do, if it determines it is spending more to recoup these funds than it is collecting?
- If the first sample of recoupment cases indicate that recoupment is not cost-effective, does FEMA have the authority under federal law to suspend its efforts, in order to protect taxpayers from additional, unnecessary expense?

Response: Although a study has not been done to look at the cost effectiveness of recouping each particular debt, the overall operating costs for FEMA's Accounts Receivable department is approximately $2.2M per year.

The Department of the Treasury (Treasury) has determined that it is cost effective to collect debts over $25 on a government wide, centralized basis. Each agency determines the cost-effectiveness of collecting its own debts, and FEMA has determined that, for debts over $25, it is cost-effective to, at a minimum, determine whether a debt is owed and send out Notices of Debt.

Treasury's Managing Federal Receivables (6-28) states that a debt is not eligible for referral to FMS for cross-servicing if the debt is:

> ...less than $25 (including interest, penalties and administrative costs)

The same language in MFR (6-35) applies to the referral of debts to the Treasury Offset Program (TOP), which intercepts payments to collect delinquent debts.

Thereafter, pursuant to 31 C.F.R. 902 and 903, for debts with a principal balance of less than $100,000, agencies have the authority to terminate debt collection efforts for those particular debts where the cost to collect is anticipated to exceed the amount recoverable, or FEMA may

consider the potential cost to the Agency of collecting the debt when determining whether to compromise the debt amount. For debts over $100,000, the Department of Justice must approve compromise or termination of collection action.

FEMA uses Treasury's Cross-Servicing program which includes a variety of collection tools to collect the debt including TOP, the program that intercepts federal payments due to a person for a debt that person owes to the Government. Some agencies have determined that using TOP is the only program that is cost-effective for collecting their debts.

2) Availability of Debt Waivers

FEMA has indicated that certain debt waivers may be available to households in cases of hardship, inability to pay, or other special circumstances, and that the agency will follow the IRS Collection Guidelines in evaluating requests for debt forgiveness.

- Please explain the IRS Collection Guidelines and any other criteria FEMA will consider in evaluating requests to forgive a debt.

Response: DHS adopted the collection procedures from the Department of the Treasury and the Department of Justice (Justice) at 31 C.F.R. Parts 900-904. FEMA complies with these procedures.

- 31 C.F.R. 902.2(a) provides "Agencies may compromise a debt if the Government cannot collect the full amount because: (1) the debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information..."

- 31 C.F.R. 901.8(a) provides "If a debtor is financially unable to pay a debt in one lump sum, agencies may accept payment in regular installments. Agencies should obtain financial statements from debtors who represent that they are unable to pay in one lump sum and independently verify such representations whenever possible."

- 31 C.F.R. 902.2(b) states "In determining the debtor's inability to pay, agencies should consider relevant factors such as the following: (1) age and health of the debtor; (2) present and potential income; (3) inheritance prospects; (4) the possibility that assets have been concealed or improperly transferred by the debtor; and (5) the availability of assets or income that may be realized by enforced collection activities."

If a debtor is unable to pay the debt in one lump sum, they may request to enter into a Payment Plan – an agreement to repay their debt in regular installments; or have their account reviewed for a Compromise of a portion or all of the debt. The first step in FEMA's Debt Resolution Process is gaining information from the Applicant regarding his or her ability to repay the debt. FEMA mails a Request for Information (RFI) packet to the debtor, to be completed and returned within 30 days for evaluation. The RFI packet includes FEMA form 127-0-1, Debt Collection Financial Statement executed under penalty of perjury, showing the debtor's assets, liabilities, income and expenses and a form to list current household expenses. In addition, the debtor must provide tax returns, bank statements, or alternate documentation to support their request. FEMA

evaluates the financial information using IRS Collection Financial Standards in determining the debtor's ability to pay the debt.

The IRS Collection Financial Standards provide a means for determining what expenses are allowed in determining whether a taxpayer has the ability to pay. At the most basic level, allowable living expenses include those expenses that meet the necessary expense test. The necessary expense test is defined as expenses that are necessary to provide for a taxpayer and his or her family's health and welfare and/or the production of income. In order to ensure taxpayers have adequate means of providing for basic living expenses, the IRS has developed national and local expense standards. A national standard is one that is the same for everyone regardless of where he or she lives and includes: food and other items; out of pocket medical; vehicle ownership; and public transportation. A local standard will vary with location due to regional cost differences and includes: housing and utilities; vehicle operating expenses; and other expenses. Some standard expense amounts are governed by household size. Generally, the total number of persons allowed would be the same as those allowed as exemptions on the most recent tax return.

FEMA uses the IRS Collection Financial Standards in the evaluation process to calculate an Applicant's net disposable income and ability to pay the debt.

If the evaluation shows that a debtor has insufficient disposable income and/or assets to pay the entire debt in one lump sum, FEMA may accept payment in regular installments. The size and frequency of the installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the debt in three years or less. FEMA obtains a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement.

If the evaluation indicates that the Applicant does not have sufficient net disposable income to repay the debt within a reasonable time or is unable to pay the debt at all, an Applicant will be considered for a Compromise of the Debt – full or partial. A Compromise is when FEMA accepts less than the full amount of the debt owed from the debtor in satisfaction of the debt based on the criteria in 31 C.F.R. 902. Other factors that are considered include:

- Low income (e.g., social security is only form of income),
- A verifiable loss of income (e.g., loss of employment, reduction in monthly pay), or
- A verifiable increase in expenses since the time of the disaster (e.g., temporary or permanent disability, other extraordinary necessary expenses).
- Age and health of the debtor.

FEMA also verifies the financial information provided by the applicant through investigation of other financial reports such as credit reports.

3) Technology Improvements to Prevent Future Improper Payments

FEMA has indicated that improper payments through the Individual Assistance program are down to less than 3% compared to 14.5% during Katrina and Rita. It's my understanding that many of these improper payments resulted from FEMA's decision to turn off its name and address verification software to avoid disbursement delays of about 48-hours after Katrina. FEMA still uses Choicepoint software, and the Inspector General estimates the disbursement delay for name and address verification at around 24-hours now.

- Aside from the lesson learned that we shouldn't deactivate fraud-prevention software in the middle of a disaster, how has the electronic verification process changed since Katrina to expedite payments and strengthen accountability? Or is it basically still the same system?
- The House recently passed a Continuing Resolution that cuts FEMA's Management and Administration account by $68 million. How would these proposed cuts impact FEMA's information technology systems and its ability to quickly verify identity and residency for future disasters and prevent improper payments?

Response: At FEMA we are committed to being responsible stewards of taxpayer dollars, and we have been actively working to finalize the recoupment process, while continuing to support communities as they recover. As a recent Inspector General audit reinforced, FEMA and other federal agencies are required by law to recoup funds that are paid in error. As a result of a lawsuit filed and new DHS regulations in 2007, FEMA's recoupment efforts were suspended. Under our current leadership, we have worked diligently to develop a fair, open and transparent process for recovering these payments.

FEMA published a Federal Register Notice on March 15, 2011 announcing our intent to proceed with recoupment and outlining the revised recoupment process. We then began mailing Notice of Debt letters on March 16, 2011 starting with the most recent disasters.

In the meantime, FEMA also worked diligently to put protections in place that will safeguard against waste, fraud and abuse, and significantly reduce the percentage of improper payments. New processes have been developed in order to improve the identification, reduction, and recovery of improper payments disbursed to federal disaster assistance applicants. While the current cases identified for recoupment represent a significant amount of improper or potentially improper assistance, FEMA has made significant strides in reducing the number of recoupable cases since Katrina, and is far better positioned to prevent future errors in disaster assistance.

First, FEMA now has the ability to validate the identity of individuals who register for assistance through electronic data verification prior to receiving any Individuals and Households Program (IHP) financial assistance. This verification is performed along with automated checks of applicant occupancy and ownership during the application process through LexisNexis. Therefore, identity, occupancy and ownership verification checks are now being conducted electronically during the application process prior to any assistance being distributed to an applicant.

Second, FEMA has focused on the increased prevention of improper payments by developing new information management procedures in our National Processing Service Centers (NPSCs). The NPSCs have worked with the Office of Chief Information Officer to improve the National

Emergency Management Information System (NEMIS) software used to process applications for disaster assistance. These actions include:

- Using identity and occupancy verification checks to prevent automated payments to applicants who may have used a fraudulent name, SSN or address;
- Flagging "high risk" addresses such as check cashing stores, mail drops, cemeteries, and jails to block them from receiving automated payments;
- Blocking duplicative rental assistance payments for overlapping months or payments over the IHP maximum;
- Stopping duplicative registrations over the Internet to prevent duplicate payments to the same applicant;
- Improving the NEMIS business rules to prevent duplicate payments to applicants at the same address; and
- Adding a NEMIS direct assistance module to track individuals in mobile homes or travel trailers in order to prevent the provision of financial rental assistance to applicants who were already housed by FEMA.

Third, FEMA has focused on the increased prevention of improper payments by instituting organizational changes which have further contributed to the decreased error rate:

- FEMA Headquarters established the IHP Assistance Group in 2008 at the NPSCs to provide clear, consistent and timely guidance regarding IHP policies and case processing procedures in order to reduce case processing errors, improve operational efficiency and overall delivery of service.
- The NPSCs have established specialized teams of employees referred to as Specialized Processing Groups dedicated to the processing of some of the more difficult cases, such as appeals and recoupment's.
- The NPSCs have expanded the Quality Control group to include reviews of special projects and new case processing procedures. This has enabled the NPSCs to rapidly identify problems with projects and new processing guidelines and take remedial action as necessary.
- The NPSCs have 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.
- The NPSCs have 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.

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The combination of these improvements has resulted in a reduction of the error rate in financial assistance from 14.53% following Hurricanes Katrina and Rita to 2.72% in FY 2009. FEMA continues to work to reduce this number further; however, these factors have significantly reduced the need for recoupment actions in disasters since Hurricanes Katrina and Rita and will continue to do so in future disasters.

With the transfers and directly appropriated funding for the Management and Administration account, FEMA actually realizes a slight net increase in M&A funding when comparing the FY 2010 to the FY 2011 enacted level. Thus, FEMA's ability to quickly verify identity and occupancy for future disasters in order to prevent improper payments is unaffected.

Post-Hearing Questions for the Record
Submitted to Elizabeth Zimmerman, Deputy Associate Administrator, Office of Response and Recovery, Federal Emergency Management Agency, U.S. Department of Homeland Security
From Senator Claire McCaskill

"Preventing Improperly Paid Federal Assistance in the Aftermath of Disasters"
March 17, 2011

1. Ms Zimmerman, you testified that under the current regulations, individuals and households targeted for recoupment have as few as 30 days from the time FEMA mails a Notice of Debt Letter to pay before interest begins to accrue. You claim that accruing interest at this point is in accordance with present law.

a. Could you please provide what legal basis DHS is relying on for using this very tight time period to begin collecting interest?
b. I am interested in the responses that you received during the notice and comment period on this particular provision. Can you provide me with a general idea of how the public responded to this particular provision and if there was any hesitancy on the part of DHS to use thirty days, especially in light of the facts behind the delay in the recoupment process?
c. Do you have the resources to properly review the pending 160,000 cases? If so, can you explain exactly what the review process entails including the number of people involved, the technology being used and the training given prior to the rollout of your new "recoupment process". Additionally, who will be conducting the oral hearings and how have they been prepared for this possible onslaught of hearings? Do you have any sense how long it will take an applicant, who chooses an oral hearing, to receive a final notice?
d. Please explain why it took from 2007 to the present to draft and publish final regulations?
e. What safeguards do you have in place to ensure that future improper payments are not made in the future or if a mistake is made it is quickly discovered?

Response: Collection and interest time frames can be found in 31 U.S.C. 3717 and the Federal Claims Collections Standards, issued jointly by Treasury and Justice (31 CFR parts 901-904).

31 CFR Section 900.2(b) defines a debt as delinquent if: it has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made.

31 CFR Section 900.9 (b) and 900.(b)(1) require that interest be charged:
(b) Agencies shall charge interest on debts owed the United States as follows:
(1) Interest shall accrue from the date of delinquency, or as otherwise provided by law.

31 CFR 901.2 requires: (a) Written demand as described in paragraph (b) of this section shall be made promptly upon a debtor of the United States in terms that inform the debtor of the consequences of failing to cooperate with the agency to resolve the debt. 31 Code of Federal

Regulations Section (a)(3)requires that the demand letter to debtors notes: The date by which payment should be made to avoid late charges (i.e. interest, penalties, and administrative costs) and enforced collection, which generally should not be more than 30 days from the date that the demand letter is mailed or hand-delivered.

The regulations that dictate the time frames for payment and interest were not promulgated by FEMA; the proposed rules were promulgated jointly by the Departments of the Treasury and Justice in 1997. In the preamble to the final rule published in 2000, Treasury and Justice addressed public comments made on the proposed regulations; none of the comments were regarding the 30-day time frame.

Review Process

The potential recoupment review process was conducted by FEMA applicant services personnel in National Processing Service Center facilities. 426 agents were specially trained to review potential recoupment cases. Agents were trained through classroom training and hands-on labs where agents worked cases with the assistance of a trainer and a subject matter expert. Agents have also received training on how to address questions and concerns from applicants dealing with sensitive matters. Office of Chief Counsel staff was also on hand to provide assistance throughout the training and review process.

Each case of potential recoupment was reviewed by applicant services personnel, and then reviewed at least one additional time by a member of the Appeals unit, training or supervisory personnel, or a member of the National Coordination Team Assistance Group. These reviewers are the most experienced and expert processing staff. When there was disagreement regarding a decision, there was at least one additional review.

When beginning a review, all agents reviewed the Events Log to determine if they had previously worked the case. If they did work it, they were told not to review the case again.

Information from Lexis Nexis and Thomson Reuter's Clear was used to attempt to verify ownership and occupancy of individuals identified for recoupment. These systems allow FEMA to compare names, social security numbers, and addresses of disaster survivors against public record. If the public record proved identity and/or occupancy for individuals and they had no other recoupment reasons, the applicant's recoupment was deemed not warranted and the applicant will not receive a Notice of Debt letter.

Oral Hearing Process

The oral hearing will be conducted by an Oral Hearings Officer from FEMA's Alternate Dispute Resolution Office, This is an attorney who has been trained in mediation, and also in Judicial Decision Making.

Note that oral hearings may be requested by the applicant, but FEMA will determine if it is appropriate. Many cases will be determined based on the documents. OCC has provided training and guidance to the Appeals Unit of FEMA regarding when to refer cases having genuine issues of veracity and credibility for oral hearing. The Quality Control Unit of FEMA and OCC will

monitor that referrals are made appropriately. OCC will provide guidance and assistance when there is any question regarding whether a case should be referred for oral hearing.

It is unclear how many cases will in fact be referred for oral hearing, but it is the goal of the Alternate Dispute Resolution Office to respond to all such requests and set them for hearing within 30 to 60 days, and to issue a written decision to the applicant within 14 days from the date of the hearing.

At FEMA we are committed to being responsible stewards of taxpayer dollars, and we have been actively working to finalize the recoupment process, while continuing to support communities as they recover. As a recent Inspector General audit reinforced, FEMA and other federal agencies are required by law to recoup funds that are paid in error. As a result of a lawsuit filed and new DHS regulations in 2007, FEMA's recoupment efforts were suspended. Under our current leadership, we have worked diligently to develop and implement a fair, open and transparent process for recovering these payments based on the new regulations adopted and lessons learned.

FEMA has made key improvements to ensure this process is as fair and as easy-to-understand as possible for disaster survivors. These improvements include clearly articulated letters informing applicants of an improper payment and notifying them of the debt amount, the reason for the determination made in their case, and what their options are for appealing or repaying the debt. The new process also outlines an appeal process that provides some eligible applicants an opportunity to participate in an oral hearing regarding their case if the indebtedness cannot be resolved by FEMA's review of the documentary evidence alone.

In the meantime, this administration has been vigilant about pursuing any potential cases of fraud or abuse, which are handled through a separate process and have not been delayed by this suspension of recoupments. The improper payments that will be pursued through the recoupment process generally are due to human or accounting errors and duplication of benefits. If a case shows evidence of fraud, FEMA immediately refers the case to the Office of Inspector General to investigate. If warranted, the Office of Inspector General refers cases to the Department of Justice for prosecution.

While the current cases identified for recoupment represent a significant amount of improper or potentially improper assistance, FEMA has made significant strides in reducing the incidence of overpayment since Katrina, and is far better positioned to prevent future errors in disaster assistance.

First, FEMA now has the ability to validate the identity of individuals who register for assistance through electronic data verification prior to receiving any Individuals and Households Program (IHP) financial assistance. This verification is performed along with automated checks of applicant occupancy and ownership during the application process through LexisNexis. Therefore, identity, occupancy and ownership verification checks are now being conducted electronically during the application process prior to any assistance being distributed to an applicant.

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Second, FEMA has focused on the increased prevention of improper payments by developing new information management procedures in our National Processing Service Centers (NPSCs). The NPSCs have worked with the Office of Chief Information Officer to improve the National Emergency Management Information System (NEMIS) software used to process applications for disaster assistance. These actions include:

- Using identity and occupancy verification checks to prevent automated payments to applicants who may have used a fraudulent name, SSN or address;
- Flagging "high risk" addresses such as check cashing stores, mail drops, cemeteries, and jails to block them from receiving automated payments;
- Blocking duplicative rental assistance payments for overlapping months or payments over the IHP maximum;
- Stopping duplicative registrations over the Internet to prevent duplicate payments to the same applicant;
- Improving the NEMIS business rules to prevent duplicate payments to applicants at the same address; and
- Adding a NEMIS direct assistance module to track individuals in mobile homes or travel trailers in order to prevent the provision of financial rental assistance to applicants who were already housed by FEMA.

Third, FEMA has focused on the increased prevention of improper payments by instituting organizational changes which have further contributed to the decreased error rate:

- FEMA Headquarters established the IHP Assistance Group in 2008 at the NPSCs to provide clear, consistent and timely guidance regarding IHP policies and case processing procedures in order to reduce case processing errors, improve operational efficiency and overall delivery of service.
- The NPSCs have established specialized teams of employees referred to as Specialized Processing Groups dedicated to the processing of some of the more difficult cases, such as appeals and recoupments.
- The NPSCs have expanded the Quality Control group to include reviews of special projects and new case processing procedures. This has enabled the NPSCs to rapidly identify problems with projects and new processing guidelines and take remedial action as necessary.
- The NPSCs have 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.

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- The NPSCs have 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.

The combination of these improvements has resulted in a reduction of the error rate in financial assistance from 14.53% following Hurricanes Katrina and Rita to 2.72% in FY 2009. FEMA continues to work to reduce this number further; however, these factors have significantly reduced the need for recoupment actions in disasters since Hurricanes Katrina and Rita and will continue to do so in future disasters.

Post-Hearing Questions for the Record
Michael Chodos, Deputy General Counsel, U.S. Small Business Administration
From Senator Mark Pryor

"Preventing Improperly Paid Federal Assistance in the Aftermath of Disasters"
March 17, 2011

1. What, if any, regulations or statutes should be amended to establish a clearer framework for the delivery of federal disaster assistance?

   SBA Response: Not at this time, since we believe that the framework for delivery of Federal disaster assistance is clear.

2. The private sector uses sophisticated methods to monitor buyer preferences and cross-check purchases. For example, iTunes, Amazon.com, and Barnes and Noble all have systems in place that monitor purchases with a relatively high degree of accuracy. Could the federal government utilize similar technology to identify duplicative benefits and improper payments before the funds are disbursed to the disaster victim? What costs and benefits would be involved in adopting such technology?

   SBA Response: The identification of duplication of benefits that can result in improper payments can be simplified by simply streamlining the process to put computer matching agreements in place between Federal agencies and state agencies delivering disaster assistance programs.

Post-Hearing Questions for the Record
Submitted to Michael Chodos
From Senator Mary Landrieu

"Preventing Improperly Paid Federal Assistance in the Aftermath of Disasters"
March 17, 2011

1) Training SBA Loan Officers

The 2009 audits illuminated errors in SBA's duplication of benefit (DOB) analysis, specifically that loan officers were not diligently following through with what is required of them: to check with insurance companies to determine the amount of insurance that had been paid prior to disbursing the disaster loans.

- How has SBA reacted to this finding?

  SBA Response: As part of our ongoing effort to ensure that applicable insurance payments are identified and properly offset against an individual's verified loss, we have revised SBA Standard Operating Procedures 50 30 (SOP) to clarify the requirement that we "determine that all DOBs (e.g. FEMA, State and local grants, insurance, etc.) have been addressed" before final disbursements. In addition, SBA issued guidance outlining the SOP change and reinforcing the need to address all insurance recoveries prior to all loan disbursements.

- How are these loan officers operating differently today than in 2009?

  SBA Response: Prior to approving any disbursements, all potential DOBs are checked and the response is documented in the file. In addition, the SBA Office of Disaster Assistance Processing and Disbursement Center has updated their training materials and course content to address the new guidance, as well as the need for clear documentation of contact with insurance carriers to confirm insurance payments. SBA has also taken steps to identify and resolve loans with duplicate benefits. For example, we continually review the portfolio to confirm and address insurance recoveries. An additional safeguard in preventing insurance DOBs is the assignment of insurance proceeds. SBA disaster borrowers are required to sign the assignment of insurance proceeds, which authorizes future insurance recoveries to be paid to SBA.

- SBA Communication with Insurance Companies?

  SBA Response: Prior to approving any disbursement, the case manager contacts the insurance companies by telephone to determine any DOBs and documents the file.

SBA Office of Inspector General's Responses to Questions from the Senate Ad Hoc Subcommittee on Disaster Recovery and Intergovernmental Affairs Hearing on Preventing Improperly Paid Federal Assistance in the Aftermath of Disasters

Questions from Chairman Pryor

Question: You spoke about the important role of HUD in providing disaster assistance but indicated some uncertainty about "whether the coordination is exactly where it needs to be." Can you elaborate a bit more on how coordination between all three agencies with primary disaster assistance responsibilities could be improved?

Answer: As the SBA OIG noted in Report No. 10-13, *SBA's Role in Addressing Duplication of Benefits between SBA Disaster Loans and Community Development Block Grants*, in response to the Gulf Hurricanes of 2005 and the Midwest flooding in 2008, SBA took the lead in working with states that had received Community Development Block Grant (CDBG) assistance to help fund home repairs in order to identify and recover duplicate benefits. Although SBA did so because it thought it was acting in the best interest of the Government to reduce duplicate benefits, these efforts resulted in $643.8 million of CDBG funds being sent to SBA to pay down 19,449 fully-disbursed SBA loans, and the undisbursed balance of 5,675 loans being reduced by $281.8 million. The CDBG funds replaced SBA disaster assistance that had already been approved to borrowers found to have sufficient resources to repay their loans, contrary to FEMA's duplicate benefit regulation. FEMA's regulation provides that disaster assistance by an agency that is lower in the delivery sequence, such as HUD in this case, should not be used to duplicate assistance that has already been provided by a higher level agency, such as SBA. As a result, $925.6 million in CDBG funds were used to pay down or reduce SBA disaster loans rather than to provide grants to other disaster victims with unmet needs who may have lacked sufficient financial resources to obtain these loans. This also shifted additional costs to the taxpayers because disaster loans are required to be repaid and CDBG grants are not. Additionally, according to HUD officials, after CDBG funds were depleted, it was necessary to obtain congressional approval for an additional supplemental appropriation.

In discussions with SBA and HUD, it became apparent that both agencies could have undertaken better coordination of their disaster assistance efforts to prevent duplication of benefits and abided by the sequence of benefit delivery prescribed by FEMA. Although the FEMA sequence of benefit delivery provided that loans should be made before grants to disaster victims, SBA advised that despite its repeated attempts to coordinate with HUD, HUD and the state agencies in Louisiana, Mississippi and Iowa made it clear that they intended to provide CDBG assistance regardless of whether an SBA had previously made a loan. Therefore, SBA believed its only choice was to use these duplicative funds to repay or reduce existing SBA loans. HUD officials, however, did not agree with SBA's characterization of their discussions and stated that they did not in any way imply that they intended to provide duplicative assistance.

In light of this difference of opinion, there would appear to be a role for FEMA to attempt to coordinate the assistance provided by SBA and HUD as FEMA was given authority to implement the duplication of benefits provision in the Stafford Act. However, it is our understanding that SBA and HUD never consulted with FEMA on this issue. As we note below, the Stafford Act could be revised to require governmental procedures more clearly define the sequence of benefit

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delivery, require agencies to comply with the sequence, and clarify FEMA's role (under the Department of Homeland Security) to oversee agency efforts.

Question a. You stated that the reason for this lack of coordination, at least in part, is due to a lack of clarity in the Stafford Act. Please provide your recommendations on how the statute could be improved.

Answer: Section 312 of the Stafford Act, which pertains to duplication of benefits, does not address the sequence of the delivery of Federal disaster assistance. Thus, it is unclear under the statute whether grant funds or loan funds should be the primary form of disaster assistance. Although FEMA has issued regulations governing the sequence of delivery of Federal disaster assistance, 44 C.F.R. § 206.191, the SBA OIG audit discussed above determined that there is some confusion regarding agency responsibilities for complying with this sequence, and preventing and rectifying duplication of benefits. In order to ensure uniformity in preventing duplication of benefits, we suggest that the Stafford Act be amended to provide clearer direction on the sequence of delivery, governmental procedures requiring agency coordination to prevent duplication of benefits, and the role of the Department of Homeland Security to oversee agency coordination. As such, we recommend amending 42 U.S.C. § 5155(b)(2) with the following underlined language:

> (2) The President shall establish such procedures as the President considers necessary to ensure uniformity in preventing duplication of benefits. <u>Such procedures shall clearly establish the delivery sequence in which all forms of Federal assistance to victims of disasters shall be provided and the steps that Federal agencies must take to ensure that they provide assistance in a manner that is consistent with this delivery sequence, and require that the agencies take appropriate measures to recover any assistance that duplicates assistance already provided by another agency. Such procedures shall also require that the Secretary of the Department of Homeland Security oversee the coordination taken by Federal agencies to ensure that they comply with the delivery sequence and do not provide duplicative assistance.</u>

Question b. In your opinion, are there other sections of the Stafford Act that should be reviewed?[1]

Answer: Our review of the Stafford Act has identified a few provisions, in addition to the provision discussed above, that could be improved through amendments. We note that the Emergency Disaster Assistance Fraud Penalty Enhancement Act of 2007, P.L. 110-179, has greatly enhanced the Government's ability to prosecute those who commit fraud to obtain Federal disaster assistance so we do not believe additional revisions to the applicable criminal statutes are needed. Other than these proposed amendments, we have not performed any audits that relate to other provisions of the Stafford Act, and, therefore, lack an informed opinion on whether other amendments are warranted.

We believe that section 312 of the Stafford Act could be revised by adding a new subsection (e) imposing civil penalties on persons that fail to disclose a duplicate benefit to the

[1] Note: Although the question asks whether other sections of the Stafford Act should be reviewed, we are interpreting this as inquiring whether other provisions should be revised.

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Government or that fail to repay a duplicate benefit or assistance that is later determined to constitute an improper payment when requested to do so by the Government

Sec. 312. Duplication of Benefits (42 U.S.C. 5155)
(e) Penalties. Any person who knowingly, or with reckless disregard for the truth of the matter, fails to disclose to the United States any payment they receive that duplicates Federal assistance provided to the person for the same purpose shall be subject to a civil penalty of not more than $5,000 per payment. Any person who fails to repay the United States for any such duplicate assistance, or to repay any assistance that the United States has determined constitutes an improper payment, within 30 days of receiving a request for such repayment from the United States, or within a longer period of time as the United States shall otherwise require, shall also be subject to a civil penalty of not more than $5,000. Provided, however, that any person who is unable at the time of such request to make such repayment and who enters into a repayment agreement with the United States shall not be subject to such civil penalty unless such person thereafter violates any term or condition of the repayment agreement.

Rationale: This new subsection would bolster the Government's ability to require disclosure of duplicate benefits and to recover, through the threat of a $5,000 civil money penalty, duplicate benefits and assistance that is later identified as an improper payment. We recommend that the "reckless disregard" standard from the False Claims Act be used in addition to the word "knowingly" in the first sentence because requiring the Government to show that a person acted "knowingly" could frustrate governmental enforcement efforts. As amended, new subsection 312(e) would fit in with section 314(b), which authorizes the Attorney General to bring a civil action in Federal district courts to recover any civil penalties imposed under the Act. The last sentence would address situations where the person was unable to repay immediately the duplicate benefit or improper payment.

Our review of section 314 of the Act also indicates that revisions may be appropriate. The revisions proposed below to subsection 314(a) would enhance the Government's ability to recover moneys paid and civil money penalties if persons misapply Federal disaster assistance (new language is underlined and deleted language is struck through):

Sec. 314. Penalties (42 U.S.C. 5157)
(a) Misuse of funds - Any person who knowingly, or with reckless disregard, misapplies the proceeds of a loan or other cash benefit obtained under this Act in a manner that is inconsistent with any governmental requirement shall be ~~fined~~ subject to a civil penalty in an amount equal to one and one-half times the misapplied amount of the proceeds or cash benefit.

Rationale: For the reasons noted above, we recommend that the "reckless disregard" standard from the False Claims Act be used because the high standard currently in the Act to show that a person acted "knowingly" could frustrate governmental enforcement efforts. Further, we propose that the word "fined" be changed to "subject to a civil penalty" in subsection 314(a) because it is unclear which agency would issue such a fine and what process would be employed to collect such a fine if a person refused to pay. As noted above, existing subsection 314(b) authorizes the Attorney General to bring a civil action to recover civil penalties. We also suggest

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that the words "in a manner inconsistent with any governmental requirement" be added because it is not entirely clear what "misapplies the proceeds of a loan or other cash benefit" means.

We also recommend that section 318, which pertains to audits and investigations, be clarified so that there is no dispute that Inspector General Offices have access to a person's books and records when conducting an audit or investigation related to a disaster assistance program. We propose that subsection 318(b) be amended with the following underlined language:

> (b) Access to records - For purposes of audits and investigations under this section, the President, <u>any Inspector General appointed under the authority of the Inspector General Act of 1978, 5 U.S.C. App. 3</u>, and <u>the</u> Comptroller General may inspect any books, documents, papers, and records of any person relating to any activity undertaken or funded under this Act.

It should be noted that these thoughts represent only the suggestions of the SBA OIG, not of any other OIG or governmental office/organization.

<u>Questions from Senator Landrieu</u>

Question: Inspector General Gustafson, in your testimony you reference that the SBA agreed with your office's 2011 audit recommendations and the SBA is working to "improve its communication with insurance companies and other agencies that provide disaster assistance."

- Will you please elaborate and explain what specific actions the SBA will take to eliminate duplicated benefits and save taxpayer dollars?

Answer: During loan origination, prior to each loan disbursement, SBA now communicates with the borrower's insurance company to identify insurance claim payments made to date. At the Disaster Loan Servicing Centers, management has agreed to perform re-verification of insurance recoveries with the applicable insurance companies between six months to one year after the loan is transferred to servicing. Also, SBA is in the process of revising its Standard Operating Procedures to provide guidance to staff in evaluating insurance recovery payments for potential duplication of benefits. Lastly, SBA has provided training to its staff so they can properly analyze and document whether insurance recovery amounts create duplication of benefits when a new insurance payment is identified.

<u>Questions from Senator McCaskill</u>

Question: During your testimony you stated that section 312 of "The Stafford Act" should be redrafted in order to give better guidance on how responsibilities should be coordinated.

a. Are there any other provisions of "The Stafford Act" or any other emergency assistance statutes that you suggest be reviewed for potential legislative fixes and why?

Answer: Please see our response to Senator Pryor's questions above. Other than those proposed amendments, the SBA OIG has not performed any audits that relate to other provisions of the Stafford Act or other emergency assistance statutes, and, therefore, we do not have any opinion on whether other statutory provisions need to be reviewed or amended.

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Post-Hearing Questions for the Record
Matt Jadacki, Assistant Inspector General, Emergency Management Oversight, Office of Inspector General, U.S. Department of Homeland Security
From Senator Mark Pryor

"Preventing Improperly Paid Federal Assistance in the Aftermath of Disasters"
March 17, 2011

1. I would like to follow up on an issue that was discussed at the hearing. I am concerned that there are lots of resources being dedicated to recoupment but there has not been a cost-effectiveness analysis of the process. Can you address the costs associated with recovering improper payments at FEMA?
    a. How much does it cost to identify improper payments, locate and notify the recipients, oversee appeals, and transfer funds?
    b. Please provide any data on salaries and other associated administrative costs.

Answer:

a. The Office of Inspector General has not made an independent analysis of the costs associated with identifying improper payments, locating and notifying recipients, overseeing appeals, or transferring funds.

b. We have not collected data on salaries or other administrative costs associated with the debt collection process.

Post-Hearing Questions for the Record
Submitted to Matt Jadacki
From Senator Mary Landrieu

"Preventing Improperly Paid Federal Assistance in the Aftermath of Disasters"
March 17, 2011

1) Cost-Effectiveness

We have a responsibility to reduce the federal deficit and reign in the national debt, and recoupment of improper payments is part of that effort. But recoupment from disaster-affected households may not produce the same savings as curbing waste in defense contracting or rescinding unspent formula grants to states. FEMA is dealing with hundreds of thousands of low-dollar amounts, as opposed to a handful of high-dollar amounts. Putting aside the issues of fairness, which are not insignificant, we have a responsibility to use common sense as we go about recouping funds, to ensure that we don't expend more than we collect at the end of the day. I have asked both FEMA and the Inspector General to provide information about the cost-effectiveness of previous recoupment efforts, but neither of them seem to have measured this in the past. Without any system in place to measure and compare the benefits and costs of recoupment, we run the ironic and very real risk of *wasting* rather than saving taxpayer funds.

- How will FEMA and the Inspector General measure the cost-effectiveness of this effort?
- What will FEMA do, if it determines it is spending more to recoup these funds than it is collecting?
- If the first sample of recoupment cases indicate that recoupment is not cost-effective, does FEMA have the authority under federal law to suspend its efforts, in order to protect taxpayers from additional, unnecessary expense?

Answer: FEMA has the responsibility to determine whether the collection actions are cost effective. The Office of Inspector General, in its oversight role, must remain independent and should not determine cost-effective measures. However, we can assess the methodology used by FEMA to make its cost effective determination, if necessary. Currently, we have no plans to conduct such a review. FEMA has advised us that, historically, approximately 35% of Individuals and Households Program debt is recouped. The time limit associated with a Treasury offset to collect a debt was eliminated and FEMA continues to receive payment on debts for years after the debt was established. Because 35% of the debt is more than

$225 million dollars, it does appear that the debt collection process is cost-effective.

If FEMA at any point in the process determines that the costs outweigh the benefits of continuing the recoupment process, FEMA may suspend the collection efforts.

FEMA does have the authority to suspend debt collection efforts for a particular debt if FEMA determines that no one liable has the present or prospective ability to pay a significant amount of the claim.

We must not forget the impact on deterring future fraud that an effective recoupment effort will have in an area of the country unfortunately prone to hurricanes, floods, and tornadoes.

Post-Hearing Questions for the Record
Submitted to Matt Jadacki, Assistant Inspector General, Emergency Management Oversight,
Office of Inspector General, Department of Homeland Security
From Senator Claire McCaskill

"Preventing Improperly Paid Federal Assistance in the Aftermath of Disasters"
March 17, 2011

1. Mr. Jadacki in your submitted written testimony you stated that "locating recipients and collecting the improper payments from them may be difficult. Most of the debt is several years old, the money has probably been spent, people have moved, and many recipients may be struggling economically." The value of improper payments has been calculated at $643 million dollars and is a significant amount of money and efforts to recoup these improper payments are necessary, overdue and mandated by the administration.

    a. Has the OIG conducted any cost-benefit analysis with respect to recoupment of these funds been conducted? If so, what were the findings? If a cost-benefit analysis has not been performed do you believe at this juncture your office should conduct one?
    b. As you stated, the debt is several years old and have probably been spent; nonetheless these payments were made in error by FEMA. What processes has the OIG recommended to FEMA regarding the recoupment of funds from people who refuse to pay or nor longer have the money? Will collection efforts be handled exclusively by the government? Or do you suspect the number of persons unwilling to pay may be larger than anticipated and outside contractors may be needed to facilitate the debt collection?

Answer: a. FEMA has the responsibility to determine whether the collection actions are cost effective. The Office of Inspector General, in its oversight role, must remain independent and should not determine cost-effective measures. The OIG can assess the methodology used by FEMA to make its cost effective determination, if necessary. We currently have no plans to conduct such a review. We believe the $643 million in potential improper payments dwarfs the costs incurred in the initial stages of the recoupment process.

b. The OIG has made no recommendations to FEMA regarding the recoupment of funds from people who refuse to pay or no longer have the money. FEMA has advised us that, historically, the agency has recouped approximately 35% of Individuals and Households Program debt over time. In this case, such recovery would result in recoupment of $225 million.

Collection of this debt is governed by the Debt Collection Improvement Act (31 USC 3711 et seq.). Pursuant to this Act, FEMA may negotiate a compromise with a debtor. FEMA has the authority to suspend debt collection for those particular debts it deems ineffective to collect. If FEMA is unable to settle a debt, FEMA transfers the debt to the Secretary of the Treasury.

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