

Department of Homeland Security **Office of Inspector General**

FEMA's Efforts to Recoup Improper Payments in
Accordance With the Disaster Assistance Recoupment
Fairness Act of 2011

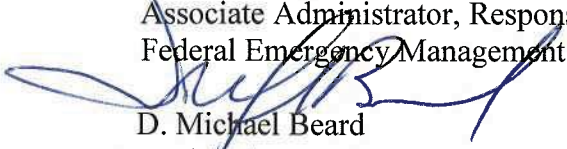




Homeland Security

MAR 23 2012

MEMORANDUM FOR: William L. Carwile, III
Associate Administrator, Response and Recovery
Federal Emergency Management Agency

FROM: 
D. Michael Beard
Assistant Inspector General
Office of Emergency Oversight

SUBJECT: *FEMA's Efforts To Recoup Improper Payments
in Accordance With the Disaster Assistance Recoupment
Fairness Act of 2011*

Attached is our initial letter report, *FEMA's Efforts To Recoup Improper Payments in Accordance With the Disaster Assistance Recoupment Fairness Act of 2011*. As required by the subject legislation, we are reporting on the cost-effectiveness of FEMA's efforts to recoup improper payments. This is the first in a series of six reports that will be issued every 3 months through June 2013. We are not making any recommendations in this first report.

Consistent with our responsibility under the *Inspector General Act*, we are providing copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. The report will be posted on our website.

Should you have any questions, please call me, or your staff may contact John Kelly, Acting Deputy Assistant Inspector General, Office of Emergency Management Oversight, at (202) 254-4100.

Attachment

Background

Following Hurricanes Katrina and Rita in 2005, the Federal Emergency Management Agency (FEMA) disbursed to the disaster survivors more than \$7 billion in individual assistance payments, some of which were later determined to have been improperly paid to individuals who were ineligible, or who received duplicate payments. In 2006, FEMA began collection, or recoupment, efforts in an attempt to recover the misspent public funds.

In 2007, a group of Hurricane Katrina disaster assistance applicants facing recoupment filed a class action lawsuit against FEMA, alleging that it did not provide sufficient procedural due process to disaster applicants identified for recoupment. The plaintiffs successfully petitioned the court to issue an injunction enjoining FEMA from continuing its recoupment activities. In 2008, in light of the injunction and revised Department of Homeland Security (DHS) debt collection regulations, FEMA terminated its recoupment process. As a result, FEMA withdrew recoupment notifications it sent to survivors of Hurricanes Katrina and Rita and later disasters and proceeded to reexamine files for evidence of overpayment. FEMA also began to redesign its recoupment and debt collection procedures to conform to agency regulations.

In 2011, FEMA commenced the revised recoupment process for the collection of individual assistance overpayments. From March through December 2011, FEMA mailed nearly 90,000 Notices of Debt and considered thousands of appeals and requests for payment plans and compromise. According to FEMA, because it does not have authority to dismiss debts due to the U.S. government, even those of small or “de minimis” amounts; all identified improper payments are to be reviewed, and are subject to recoupment and appeal.

Some members of Congress were concerned about the fairness of FEMA collecting overpayments that had been the result of FEMA error and when a significant amount of time had elapsed before FEMA provided actual notice to the debtors. As a result of these concerns, Congress passed, and the President signed, the *Disaster Assistance Recoupment Fairness Act of 2011* (DARFA) (section 565 of the *Consolidated Appropriations Act, 2012*, P.L. 112-74).

Individuals who fail to pay debt not waived pursuant to DARFA, or who do not respond to FEMA notices, will be referred to the Department of the Treasury (*Debt Collection Improvement Act of 1996*, P.L. 104-134).

DARFA authorizes the Administrator of FEMA to waive a debt arising from improper payments provided for disasters declared between August 28, 2005, and December 31, 2010, if the excessive payment was based on FEMA error; there was no fault by the debtor; collection of the debt is against equity and good conscience; and the debt does not involve fraud, a false claim, or misrepresentation by the debtor or others with an interest in the claim. FEMA is authorized to grant a waiver to eligible debtors with a 2010 adjusted gross income (AGI) of up to \$90,000 or less; and, subject to certain conditions,

only a partial waiver to those with an AGI greater than \$90,000. DARFA also directs the Inspector General of the Department of Homeland Security to periodically report on the cost-effectiveness of FEMA's efforts to recoup improper payments. This is the first in a series of six reports addressing the state of such efforts.

Overview

As discussed with the Senate's Committees on Homeland Security and Governmental Affairs and Appropriations, and the House Committees on Homeland Security, Transportation and Infrastructure, and Appropriations, the Office of Inspector General's (OIG) reporting pursuant to DARFA (§ 565(b)(4)) will follow the ground rules below.

1. For the purposes of OIG reporting, FEMA efforts are defined as undertakings such as (i) notifying potential debtors; (ii) adjudicating and reviewing responses; (iii) evaluating support provided; (iv) making arrangements to collect, waive, partially waive, terminate debt, and refer matters to the U.S. Department of the Treasury; (v) implementing quality control measures; and (vi) training staff to perform the above tasks.
2. Timeframe for the above FEMA efforts will be 15 days prior to the legislatively mandated deadline for each of the serial six OIG reports (e.g., the next OIG report, which is due on June 23, 2012, will cover our assessment activities up until June 8, 2012).
3. Costs incurred by FEMA will include equipment and contractual expenses, and the salaries of temporary and permanent staff for those times they are assigned to efforts described in paragraph 1, above.

FEMA Implementation of DARFA

FEMA has established a centralized review and case management process, and provides quality assurance and control activities. The Waiver Review Governance Group has oversight of waiver determinations made by the Waiver Review Group. Each application will be reviewed; every case is to be examined in light of its particular facts. According to DARFA, FEMA has the authority to waive debts that satisfy the following conditions:

- Applicant debt will not be waived if it involves fraud, the presentation of a false claim, or a misrepresentation by the debtor or any party having an interest in the claim. Such cases will be referred to DHS OIG.
- FEMA will consider the fact that the agency's systems were overwhelmed by the severity of Hurricanes Katrina and Rita and the volume of applicants. FEMA error may have resulted from manual processing error, failure to include information in the system, failure to follow established procedures, or intentionally lowering their system of internal controls to pay survivors more rapidly.

- If assistance was distributed through no fault of the debtor, FEMA will consider unique circumstances that may have created the debt, such as mandatory evacuations, problems with communications, missing personal documents, and sustained chaotic conditions.
- Debts can be waived if collection would be “against equity and good conscience.” In doing so, FEMA will evaluate any financial hardship that would result from collection, whether a debtor spent the overpayment for disaster-related purposes and has no ability to repay funds, and other personal circumstances.

If the above conditions are met, the debtor may be eligible for a full or partial waiver based on AGI. Although we have not yet reviewed the Internal Revenue Service’s ruling, FEMA officials said that the Internal Revenue Service advised that debt waived under DARFA will not be treated as earned income.

According to FEMA, because Congress passed DARFA as part of an annual appropriations act and DARFA does not contain a provision extending its authority beyond the end of fiscal year 2012, FEMA’s authority to waive debt under DARFA expires at the end of fiscal year 2012.

Review Results to Date

Prior to the enactment of DARFA, FEMA sent out 89,850 Notice of Debt letters. Of that number, 9,653 recipients, or about 11%, have responded. The U.S. Postal Service returned 14,375 letters (16%) as “undeliverable.” The remaining 65,822 letters, or 73%, have gone unanswered. FEMA considers the debts of the nonrespondents to be valid, absent any evidence to the contrary.

Beginning in February 2012, FEMA began implementing DARFA with a review of the debts of those survivors who had responded to the Notice of Debt letters and did not receive a favorable decision. FEMA will also send Notice of Waiver letters to most DARFA-eligible survivors, making them aware of DARFA and providing them 60 days to apply for a waiver of their debt. FEMA will *not* send Notice of Waiver letters to those who have already successfully appealed, been found guilty of fraud, been ordered by a court to pay restitution, or individuals who are deceased. FEMA mailed 87,413 Notice of Waiver letters and issued a directive addressing recoupment policy and procedures in February 2012. Table 1 lists recoupment-related actions.

Table 1. Recoupment Actions as of February 7, 2012¹

Action	Total
Universe of Possible Recoupment Cases	167,488
Cases Reviewed, Not for Recoupment	76,310
Cases Identified for Potential Recoupment	91,178
Potential Recoupment Candidates, Deceased	2,443
Potential Recoupment Cases	88,735

Source: FEMA.

We have requested, and FEMA is assembling, information that will enable us to assign costs to its recoupment activities. This information, as well as an interim cost-effectiveness assessment, will be provided in our future reports.

¹ These numbers are subject to change as we are waiting FEMA reconciliation. They may be updated in our future reports.

Appendix A

Purpose, Scope, and Methodology

The objective of this review was to determine the cost effectiveness of FEMA's efforts to recoup improper payments in accordance with the Disaster Assistance Recoupment Fairness Act of 2011. To accomplish our objective, we reviewed and analyzed FEMA's Management Directive: *Waiving Debts Pursuant to the Disaster Assistance Recoupment Fairness Act of 2011*, federal laws, regulations, and testimony, prior OIG reports relevant to our review, and other applicable documents.

We interviewed FEMA headquarters officials and National Processing Service Center employees in order to determine their plans for implementing the Disaster Assistance Recoupment Fairness Act of 2011. We conducted these interviews at FEMA Headquarters in Washington, DC. and Winchester, VA.

We conducted this review between February and March 2012 pursuant to the Inspector General Act of 1978, as amended, and according to the Quality Standards for Inspections issued by the Council of the Inspector General on Integrity and Efficiency.

We appreciate the efforts by FEMA management and staff to provide the information and access necessary to accomplish this review.

Appendix B
Major Contributors to this Report

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Appendix C
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