

# 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 (3)






**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

September 21, 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 Management Oversight

SUBJECT: *FEMA's Efforts To Recoup Improper Payments in  
Accordance With the Disaster Assistance Recoupment  
Fairness Act of 2011 (3)*

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

Major contributors to this report are Kaye McTighe, Director; Adrian Dupree, Audit Manager; Stuart Josephs, Auditor; and Aaron Naas, Program Analyst.

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

Attachment



## **Background**

The *Disaster Assistance Recoupment Fairness Act of 2011* (DARFA; Section 565 of the *Consolidated Appropriations Act, 2012*, P.L. 112-74) provides a limited-time, discretionary authority for the Administrator of the Federal Emergency Management Agency (FEMA) to waive debts arising from improper payments provided for disasters declared between August 28, 2005, and December 31, 2010. DARFA directs the Department of Homeland Security (DHS) Inspector General to report on the cost-effectiveness of FEMA's efforts to recoup improper payments. This is the third in a series of six reports that will be issued every 3 months through June 2013.

Following Hurricanes Katrina and Rita in 2005, and other disasters up to December 31, 2010, FEMA disbursed more than \$8 billion in assistance payments, some of which were later determined to have been improperly paid to individuals who were ineligible or who received duplicate payments. The debts in question arose in part because FEMA relaxed its internal controls in order to provide expedited delivery of assistance grants to displaced disaster survivors. The relaxed internal controls involved potential payments of \$621.6 million to 167,488 recipients. After reviewing all of the cases, FEMA reduced that original estimate and determined that 91,178 recipients, who received more than \$371 million, were candidates for recoupment. According to FEMA, there is sufficient justification not to recoup payment from the other 76,310 recipients, who collectively received more than \$250 million in disaster assistance.

The first report (OIG 12-62, March 2012) of this series presented in-depth background information, which is encapsulated in appendix B of this report.

## **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.



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2. The timeframe for the above FEMA efforts will be 15 days prior to the legislatively mandated deadline for each of the six serial OIG reports (e.g., the next OIG report, which is due on December 23, 2012, will cover our assessment activities up until December 8, 2012).

3. Costs incurred by FEMA will include equipment and contractual expenses, salaries of assigned temporary and permanent staff, and refunds to those who were originally required to repay their disaster assistance benefits but were later deemed eligible for a waiver.

### Review Results to Date

FEMA provided OIG with information regarding its DARFA waiver actions and estimated costs since December 2011. As of September 7, 2012, FEMA adjudicated 18,283 cases totaling \$101,113,733 that were initially identified for recoupment. Of that amount, FEMA has granted waivers for applicants in approximately 93 percent of the cases it has reviewed. Specifically, FEMA has granted 16,990 waivers and denied 1,293 waivers totaling \$94,862,566 and \$6,251,167, respectively. FEMA has recouped from denied waivers \$1,312,956. Additionally, FEMA has expended an estimated \$7,287,666 on related activities. This includes planning and implementing provisions of the process, training employees, and conducting waiver activities.

FEMA determines whether applicant cases should be waived based on its interpretation of DARFA requirements. In February 2012, FEMA sent Notices of Waiver letters to disaster survivors that were deemed potentially eligible for a waiver based on DARFA legislation. Notices of Waivers were not sent to disaster survivors that are deceased, under court ordered restitution, convicted of fraud, or successfully appealed. Disaster survivors notified FEMA in writing if they wanted to apply for waiver of their debt. FEMA reviews the DARFA cases at their facility in Winchester, Virginia, where we conducted fieldwork to observe the process and review a sample of cases.

FEMA adjudicators review each submission package, including applicant's statements regarding their individual circumstances, inability to repay the debt, statement of loss, as well as items replaced and funds expended. Applicants' are not required to provide copies of their federal tax returns. Rather they certify as to their adjusted gross household income. Based on an analysis of each applicant's circumstances, FEMA adjudicators, using the criteria set forth in FEMA's Management Directive: *Waiving Debts Pursuant to the Disaster Assistance Recoupment Fairness Act of 2011*, prepare a summary worksheet recommending approval or denial of a waiver and forward that recommendation to a team leader for review. The Management Directive also states



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that FEMA will construe this policy liberally in favor of the debtor, except for duplication of benefit requirements where FEMA has provided specific written notice to the debtor.

In cases where it is determined that it may be against equity and good conscience to have the applicant repay the debt, FEMA reviewers evaluate if less than 36 months has elapsed since the time FEMA awarded the assistance and the date the final notification letter for debt was sent to the debtor, what financial hardship would result from collection, whether survivors spent the funds for disaster-related purposes and are unable to reclaim the funds, or whether other personal circumstances exist that would make collection unduly burdensome or grossly unfair. If there is not enough information provided to FEMA within the letter submitted for their waiver request, FEMA, based on the circumstances of an individual's cases, may request additional documentation, which could include repair costs and receipts for needed material.

When completed, the team leader forwards the worksheets to their director for concurrence. Due to the volume of waiver requests, the director does not conduct in-depth case reviews; however, if the director has questions about a particular case, a meeting will be held with the case's adjudicators. Subsequent to the above review, the Waiver Review Governance Group conducts a quality assurance assessment by reviewing 30 percent of DARFA applicant cases that were not waived. Additionally, there is weekly ongoing dialogue with the Waiver Review Governance Group discussing eligibility standards.

We are in the process of reviewing a sample of adjudicated DARFA cases and will provide the results of our review in a future report.

Table 1 summarizes FEMA's decisions on the 18,283 adjudicated disaster assistance recipients requesting a debt waiver under the DARFA provisions. A debtor may have qualified for a waiver in more than one category which is reflected in the chart by occurrence. Under the current DARFA process, FEMA may grant either a full or partial waiver based on applicants meeting five basic eligibility requirements. This includes applicants receiving payments based on FEMA error. According to FEMA's Management Directive: *Waiving Debts Pursuant to the Disaster Assistance Recoupment Fairness Act of 2011*, FEMA error may have resulted from manual processing errors, failure of FEMA personnel to include information in the system, failure of personnel to verify disaster-related loss or need prior to authorizing payment, or adoption of a new policy in the midst of a disaster.



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**Table 1. FEMA Granting or Denying DARFA Waivers**

| Reasons for Debt Recoupment                                  | Occurrences   | Waivers Granted     | Occurrences  | Waivers Denied     |
|--|---------------|---------------------|--------------|--------------------|
| Duplication of Benefits With Household Member                | 6,697         | \$50,448,050        | 205          | \$1,293,957        |
| Duplication of Benefits With Insurance                       | 1,465         | 7,577,832           | 436          | 2,923,873          |
| Another Member of Household Received Insurance               | 708           | 5,846,500           | 21           | 145,098            |
| Housing Assistance Overpayment Home Repair/Rental Assistance | 2,878         | 6,632,655           | 139          | 332,308            |
| Occupancy Not Verified                                       | 3,487         | 7,835,915           | 212          | 572,883            |
| Not Primary Residence (Students)                             | 889           | 2,656,854           | 66           | 200,297            |
| Not Primary Residence  | 637           | 3,315,238           | 32           | 153,800            |
| Other  | 3,510         | 10,549,522          | 221          | 628,951            |
| <b>Total</b>   | <b>20,271</b> | <b>\$94,862,566</b> | <b>1,332</b> | <b>\$6,251,167</b> |

Source: FEMA.

FEMA provides disaster survivors at the time of applying for assistance eligibility rules for receiving assistance. Applicants are required to sign a Declaration and Release form (See appendix C). Applicants must certify that they are the only individual submitting an application for the type of disaster assistance requested in their household and that disaster aid money will be returned to FEMA if they receive insurance or other money for the same loss. Listed below are some examples of applicants who FEMA deemed eligible for waivers and their reasons why FEMA requested recoupment prior to DARFA.

- **Duplication of Benefit with Household Member:** The applicant registered online as an uninsured renter on September 6, 2005 and received \$14,750 from FEMA for personal property loss, rental assistance, and expedited housing assistance. The next day, his spouse registered, cited the same address, and received \$21,387 in disaster assistance for flood damages. An OIG review of FEMA’s database revealed that a third individual at the same address received \$18,330. In this instance, the three individuals received a total of \$54,466. According to FEMA, registrations from the same damaged address were not reviewed for duplication.

FEMA’s records show that both the original applicant and spouse were sheltered inside the Lafayette Cajundome at the time of their applications, but claimed they were unaware of the other’s application. According to FEMA, the improper payments occurred because controls had been lowered to expedite assistance to separated households and payments were duplicated. FEMA fully waived the improper payment amount of the first applicant, citing that the erroneous payment occurred because of FEMA error.



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- **Duplication of Benefit with Household Member:** The applicant registered on September 10, 2005 as an uninsured renter, and received assistance totaling \$17,302, for rental assistance, personal property loss, dental assistance, and expedited housing assistance. An OIG review of FEMA's database revealed that two other individuals received disaster assistance totaling \$48,923 at that same damaged address. According to FEMA, controls were relaxed which prevented the system from recognizing the damaged address as a duplicate with another applicant.

FEMA notified the original applicant that \$10,391 of the total amount, awarded for personal property damage, was an improper payment, for which the debtor subsequently requested a waiver. FEMA's records show that the improper property damage payment occurred because a non-traditional, geospatial inspection was used following Hurricane Katrina. In the waiver review, FEMA stated that no contradictory information was on file to show debtor fault, cited FEMA error, and thus waived the improper payment of \$10,391.

- **Duplication of Benefit:** Although the applicant received a total of \$6,358 following Hurricane Katrina, at issue in this case is the duplicate \$2,000 payments he was awarded when FEMA relaxed controls to expedite assistance by issuing debit cards. When notified of the overpayment, the applicant acknowledged that he received two separate \$2,000 payments, and returned that amount to FEMA. FEMA again distributed \$2,000 to the applicant. The applicant claimed that he did not know it was an overpayment until FEMA notified him of his debt approximately two years later.

FEMA considered the overpayment the agency's error and that the applicant did not have the programmatic knowledge to realize it was an improper payment. FEMA waived the improper payment of \$2,000 based on interpretation of FEMA's DARFA guidance.

- **Duplication of Benefit with Insurance:** The applicant applied online as an owner with homeowners insurance on September 13, 2005, and was awarded more than \$27,000 for personal property loss, replacement housing, expedited disaster assistance, and rental assistance. The previous day, his sister applied as an owner with homeowners and flood insurance and received \$4,358. At issue in this case is \$21,242 that the brother received for personal property and replacement housing which was covered by insurance.

FEMA waived the improper payments of \$21,242, citing no fault on the debtor's part, and due to error by FEMA, which had lowered its internal controls following Hurricane Katrina.



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- **Ownership Not Verified:** Following Hurricane Ike on September 17, 2008, the applicant registered as an uninsured property owner when, in fact, she did not own the residence. The record shows that the FEMA housing inspector at the time incorrectly identified the applicant as the residence’s owner. The applicant was improperly paid \$12,021 for home repair, in addition to rental assistance and other needs assistance for an additional \$5,019. At issue here is the \$12,021 the applicant received for damage to a property she did not own.

FEMA waived improper payments of \$12,021, citing there is no debtor fault. The waiver case file concluded that the improper payment occurred due to FEMA error on the part of the home inspector who did not discover that the applicant was not the true owner.

Table 2 lists the costs that FEMA has incurred implementing the provisions of DARFA. Costs include planning and implementing provisions of the process, training staff, and conducting waiver activities. According to FEMA, no additional staff has been hired. Since May 14, 2012, FEMA required mandatory overtime for the DARFA Waiver Review Group. These costs are included with the overall FEMA staff costs in the table below. According to FEMA, a majority of FEMA’s adjudicators at the Virginia NPSC have received training to answer DARFA waiver applicant questions.

**Table 2. DARFA Total Estimated Costs**

| Category             | Cost               |
|----------------------|--------------------|
| FEMA Staff           | \$4,665,814        |
| Contracting          | 110,146            |
| Applicant Refunds    | 2,511,706          |
| <b>Overall Total</b> | <b>\$7,287,666</b> |

Source: FEMA.

It is too early to determine the cost-effectiveness of the process because waiver requests and reimbursements are still ongoing. These issues will be addressed in future reports as information becomes available.





## **Appendix A**

### **Objective, Scope, and Methodology**

The objective of this review was to provide an interim report on the cost-effectiveness of FEMA's efforts to recoup improper payments in accordance with DARFA. 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 waiver and recoupment process for adhering to DARFA. We conducted these interviews at FEMA locations in Washington, DC, and Winchester, VA.

We conducted this review between June and September 2012 under the authority of the *Inspector General Act of 1978*, as amended, and according to the Quality Standards for Inspections issued by the Council of the Inspectors 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**

### **In-Depth Background**

For disasters declared between August 28, 2005 and December 31, 2010, FEMA disbursed more than \$8 billion in 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 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. 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 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 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.

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, DARFA (section 565 of the *Consolidated Appropriations Act, 2012*, P.L. 112-74).

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) less than or equal to \$90,000; and, subject to certain conditions, only a partial waiver to those with an AGI greater than \$90,000.



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**Appendix C**  
**FEMA Declaration and Release Form**

|  |                      |   |             |
|--|----------------------|---|-------------|
| DEPARTMENT OF HOMELAND SECURITY<br>FEDERAL EMERGENCY MANAGEMENT AGENCY<br><b>DECLARATION AND RELEASE</b>   |                      | <b>O.M.B. No. 1660-0002</b><br><b>Expires August 31, 2013</b> |             |
| <b>DECLARATION AND RELEASE</b>   |                      |   |             |
| <p>In order to be eligible to receive FEMA Disaster Assistance, a member of the household must be a citizen, non-citizen national or qualified alien of the United States. <b>Please read the form carefully, sign the sheet and return it to the Inspector, and show him/her a current form of photo identification.</b> Please feel free to consult with an attorney or other immigration expert if you have any questions.</p>  |                      |   |             |
| <p>I hereby declare, under penalty of perjury that (check one):</p> <p><input type="checkbox"/> I am a citizen or non-citizen national of the United States.</p> <p><input type="checkbox"/> I am a qualified alien of the United States.</p> <p><input type="checkbox"/> Print full name and age of minor child: I am the parent or guardian of a minor child who resides with me and who is a citizen, non-citizen national or qualified alien of the United States. Print full name and age of minor child: _____</p>   |                      |   |             |
| <p><b>By my signature I certify that:</b></p> <ul style="list-style-type: none"> <li>* Only one application has been submitted for my household.</li> <li>* All information I have provided regarding my application for FEMA disaster assistance is true and correct to the best of my knowledge.</li> <li>* I will return any disaster aid money I received from FEMA or the State if I receive insurance or other money for the same loss, or if I do not use FEMA disaster aid money for the purpose for which it was intended.</li> </ul> <p><b>I understand that,</b> if I intentionally make false statements or conceal any information in an attempt to obtain disaster aid, it is a violation of federal and State laws, which carry severe criminal and civil penalties, including a fine up to \$250,000, imprisonment, or both (18 U.S.C. §§ 287, 1001, and 3571).</p> <p><b>I understand that the</b> information provided regarding my application for FEMA disaster assistance may be subject to sharing within the Department of Homeland Security (DHS) including, but not limited to, the Bureau of Immigration and Custom Enforcement.</p> <p><b>I authorize FEMA to verify</b> all information given by me about my property/place of residence, income, employment and dependents in order to determine my eligibility for disaster assistance; and</p> <p><b>I authorize</b> all custodians of records of my insurance, employer, any public or private entity, bank financial or credit data service to release information to FEMA and/or the State upon request.</p> |                      |   |             |
| NAME (print)   | SIGNATURE            | DATE OF BIRTH   | DATE SIGNED |
| INSPECTOR ID NO.   | FEMA APPLICATION NO. | DISASTER NO.  |             |
| ADDRESS OF DAMAGED PROPERTY  | CITY                 | STATE   | ZIP CODE    |
| <b>PRIVACY ACT STATEMENT</b>   |                      |   |             |
| <p><b>AUTHORITY:</b> The Robert T. Stafford Disaster Relief and Emergency Assistance Act as amended, 42 U.S.C. § 5121 -5207 and Reorganization Plan No. 3 of 1978; 4 U.S.C. §§ 2904 and 2906; 4 C.F.R. § 206.2(a)(27); the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104-193) and Executive Order 13411. DHS asks for your SSN pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3325(d) and § 7701(c) (1).</p> <p><b>PRINCIPAL PURPOSE(S):</b> This information is being collected for the primary purpose of determining eligibility and administering financial assistance under a Presidential-declared disaster. Additionally, information may be reviewed internally within FEMA for quality control purposes.</p> <p><b>ROUTINE USE(S):</b> The information on this form may be disclosed as generally permitted under 5 U.S.C. § 552a(b) of the Privacy Act of 1974, as amended. This includes using this information as necessary and authorized by the routine uses published in DHS/FEMA - 008 Disaster Recovery Assistance Files System of Records (September 24, 2009, 74 FR 48763) and upon written request, by agreement, or as required by law.</p> <p><b>DISCLOSURE:</b> The disclosure of information on this form is voluntary; however, failure to provide the information requested may delay or prevent the individual from receiving disaster assistance.</p>   |                      |   |             |
| <b>PAPERWORK BURDEN DISCLOSURE NOTICE</b>  |                      |   |             |
| <p>Public reporting burden for this data collection is estimated to average 2 minutes per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and submitting this form. You are not required to respond to this collection of information unless a valid OMB control number is displayed on this form. Send comments regarding the accuracy of the burden estimate and any suggestions for reducing the burden to: Information Collections Management, Department of Homeland Security, Federal Emergency Management Agency, 1800 South Bell Street, Arlington, VA 20598-3005, Paperwork Reduction Project (1660-0002) <b>NOTE: Do not send your completed form to this address.</b></p>  |                      |   |             |

FEMA Form 009-0-3, AUG 2010

REPLACES ALL PREVIOUS FEMA Form 90-89B



## **Appendix D**

### **Report Distribution**

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