

# 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 (4)



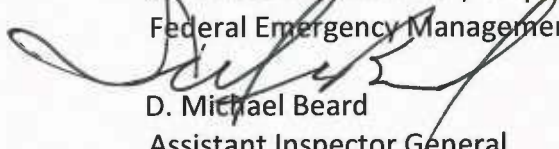


**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

DEC 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 (4)*

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 (4)*. As required by the subject legislation, we are reporting on the cost-effectiveness of FEMA's efforts to recoup improper payments. This is the fourth 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, 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. Otherwise, FEMA is required to recoup improperly paid amounts under Federal debt collections laws. 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 fourth in a series of six reports that are to 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 to waive the debt obligations and 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.



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 March 23, 2013, will cover our assessment activities up until March 8, 2013).
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.

## **Results of Review**

FEMA did not always properly grant waivers for DARFA cases it adjudicated. Specifically, about 30 percent of the cases we reviewed in our statistically validated sample did not have adequate support to grant waivers. Conversely, we determined that approximately 70 percent of the cases we reviewed had sufficient evidence to support an applicant's waiver request. For cases that lacked adequate support, we are not categorically stating that FEMA should have denied the applicant's request; rather, our review of FEMA's decisions did not find sufficient information in these case files to meet the criteria set forth in either DARFA or FEMA's implementing regulations to justify the waiver. And in some instances FEMA waived debts even though case files contained evidence of fault by the debtors that FEMA did not resolve. DARFA forbids waivers of debts that involve fault or misrepresentation, and FEMA's Management Directive on DARFA, states that "A waiver may not be authorized if [FEMA] determines the debtor is at fault. There are no exceptions to this rule."

As of December 10, 2012, FEMA granted waivers for applicants in approximately 86 percent of the cases it has reviewed. FEMA granted 17,517 waivers and denied 2,852 waivers totaling \$97,664,769 and \$15,027,894, respectively. FEMA has recouped \$2,774,295 from denied waivers. FEMA has expended an estimated \$9,569,776 on related activities.

### **FEMA Waived Disaster Relief Debt Based on Inadequate Information**

We did not find sufficient information in FEMA's case files to justify about 30 percent of the DARFA requests that FEMA authorized. To assess FEMA's DARFA waiver decision making process in July 2012, FEMA provided OIG with information regarding 13,363 requests totaling more than \$74 million for which it granted DARFA waivers. We statistically sampled and reviewed 285 of these cases to determine whether FEMA's decision to grant the waivers satisfied the requirements set forth in both DARFA and FEMA's implementing regulations.



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We determined that FEMA waived DARFA disaster debt requests without sufficient evidence that the applicant met both the requirements of DARFA and FEMA’s implementing regulations. Most of the waiver decisions we questioned involved requests where multiple applicants in the same household are paid assistance for identical personal property (duplicate payments), rental assistance, and/or expedited assistance (a one-time payment of \$2,000 for housing).<sup>1</sup> Table 1 summarized the results of the 285 waivers that we reviewed.

**Table 1. Summary of Whether DARFA Waiver Decisions Were Adequately Supported**

| Reasons for Debt Recoupment    | Documentation Supports Waiver |                  | Documentation Does Not Support Waiver |                  | Total      |                    |
|--------------------------------|-------------------------------|------------------|---------------------------------------|------------------|------------|--------------------|
|                                | Number                        | Amount           | Number                                | Amount           | Number     | Amount             |
| Duplication of Benefits        | 99                            | \$653,258        | 35                                    | \$323,982        | 134        | \$977,240          |
| Occupancy Not Verified         | 19                            | 47,263           | 24                                    | 48,000           | 43         | 95,263             |
| Housing Assistance Overpayment | 36                            | 107,476          | 7                                     | 18,534           | 43         | 126,010            |
| Other                          | 46                            | 188,173          | 19                                    | 167,012          | 65         | 355,185            |
| <b>Total Cases Reviewed</b>    | <b>200</b>                    | <b>\$996,170</b> | <b>85</b>                             | <b>\$557,528</b> | <b>285</b> | <b>\$1,553,698</b> |

Source: OIG.

To obtain disaster assistance, applicants must certify, among other things, that they are the only individual submitting an application for the type of disaster assistance requested in their household and that the disaster aid money will be returned to FEMA if they receive insurance or other compensation for the same loss. Applicants are required to attest to this by signing a Declaration and Release Form (See appendix D). DARFA prohibits the waiver of improper disaster assistance payment if the applicant made a false or misleading statement while applying for assistance.

According to FEMA’s Management Directive, *Waiving Debts Pursuant to the Disaster Assistance Recoupment Fairness Act of 2011* (Management Directive), applicants are presumed to be uninformed about FEMA eligibility requirements. However, the directive states an applicant may not be granted a waiver if FEMA determines the debtor is at fault and sets forth the following standard:

<sup>1</sup> FEMA does not consider applicants as receiving duplicative benefits such as expedited assistance where applicants are not related or dependents or when receiving rental assistance where applicants relocate to different locations.





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Fault exists, if in light of all the circumstances and based on a reasonable person standard, the *debtor knew or should have known* he or she was receiving an overpayment. Fault can derive from an act or a failure to act. Unlike fraud, fault does not require a deliberate intent to deceive.

Additionally, the directive states that FEMA will implement the debt waiver policy liberally in favor of the debtor except where FEMA has provided specific written notice to the debtor regarding duplication of benefit requirements.

Importantly, the Management Directive sets forth numerous criteria for FEMA staff to evaluate debtor fault. It does not say that FEMA should presume no fault unless there is incontrovertible proof of fault. Instead, the directive provides for a FEMA preliminary finding of debtor fault in the face of indications of fault, and tells FEMA staff to consider conducting a conference call to receive additional information from the debtor. Staff “will also request information in writing from the debtor before making a final determination of debtor fault.” The directive then sets forth a list of eight separate criteria by which to evaluate fault and move from a preliminary to a final determination.

A FEMA official said that during normal recoupment reviews, FEMA scrutinizes applicants from the same household requesting assistance. This official also said that DARFA adjudicators focus only on evidence of fraud or applicant fault when reviewing “linked” cases—separate applications involving members of the same household, same event. Absent such evidence, an applicant is considered a candidate for waiver. FEMA guidance does not provide adequate instructions to review and compare linked cases for other anomalies, such as Duplication of Benefits. For example, we found no indication in the DARFA Job Aid instructing adjudicators to analyze itemized listings (if a manual inspection of the dwelling was conducted) of personal property assistance that applicants received within the same damaged dwelling for possible duplication. Furthermore, the Job Aid does not provide adjudicators clear instructions to verify that multiple applicants did not relocate to the same address when receiving rental assistance. Consequently, information that is vital to adjudicate cases may not have been fully reviewed, which could contribute to the high rate of waiver approval.



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In February 2012, FEMA sent Notices of Waiver letters to disaster survivors it considered potentially eligible for a waiver based on DARFA legislation. Disaster survivors are required to notify FEMA in writing if they wanted to apply for waiver and to send FEMA a letter specifying why it would be unfair for FEMA to collect their debt. FEMA specifically instructed the recipients of the letters that the waiver requests should explain one or more of the following: (1) why repaying the disaster assistance debt would cause serious financial hardship, (2) they spent the disaster assistance on disaster related needs and they have no ability to repay debt, or (3) other personal circumstances exist that would make collection burdensome or grossly unfair. In the letter, FEMA did not request the debtors to explain why they were not at fault for receiving the improper payment.

Since DARFA limits waivers to instances in which “there was no fault on behalf of the debtor” and FEMA regulations require adjudicators to assess debtor fault when making a decision to grant a waiver, we think it is reasonable for there to be evidence in the waiver case file that explains why the debtor did not cause the improper payment. It would have been advisable to ask waiver applicants for a statement to that effect, particularly since FEMA asked for other DARFA information in its notifications of waiver eligibility. In cases involving evidence of fault or fraud, we believe that before granting waivers FEMA had an obligation to ask probing questions and receive satisfactory answers either by teleconference or in writing. Such information should be documented in the case. We are not suggesting that only a full scale investigation would do, only compliance with the relatively cursory procedures contained in FEMA’s own guidance, the Management Directive. That would have been consistent with DARFA.

Housing assistance overpayments can occur when ineligible applicants receive payments for, among other reasons, rental assistance, home repair, and personal property loss. To expedite assistance to disaster survivors, FEMA lowered its internal controls, which may have led to overpayments. For example, FEMA provided applicants duplicative payments for expedited assistance (applicants receiving funds into their banking accounts and a debit card), in such cases, we determined that this was FEMA error and no fault of the debtor. In other instances, there was not always sufficient documentation to support FEMA’s decision to waive housing assistance overpayments.

For Hurricanes Katrina and Rita, FEMA provided expedited housing assistance to disaster survivors to help meet critical and immediate needs for those displaced from their homes. To ensure an applicant’s eligibility for these benefits, FEMA normally would have verified the applicant’s occupancy of the damaged dwelling at the time of registration for disaster assistance. Following Hurricanes Katrina and Rita, FEMA made payments without verifying occupancy. FEMA relied on representations that disaster survivors made at the time of applying for assistance. Subsequently, FEMA used a



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contractor to automatically verify through public records the address that individuals included on their applications. FEMA only requested proof from applicants if the address could not otherwise be verified. In our sample, many cases lacked evidence that an applicant's occupancy had been verified. It is reasonable to believe that applicants should know where they lived at the time of the disaster.

Although, the vast majority of DARFA cases that we reviewed had sufficient evidence for FEMA to grant waivers, the following are examples of cases that lacked sufficient evidence to do so.

- **Duplication of Benefit With Household Member:** The applicant selected in our statistical sample registered for assistance with FEMA on September 14, 2005, and received \$14,781. Four other members of the same household registered and received additional assistance totaling \$87,469 for expedited housing assistance, personal property loss, and rental assistance. Three of the five applicants received personal property loss payments totaling \$47,451.

Two of these applicants (married at the time of the disaster) received duplicate personal property payments for a range (\$689), washer (\$539), dryer (\$385), and refrigerator (\$704). A third individual, listed as a dependent of one of these applicants, was paid \$10,391 for personal property loss through a geospatial inspection. A geospatial inspection can cover major household appliances similar to the items previously listed. Applicants are typically present when inspections are conducted to identify property damages. We find it unlikely that multiple applicants within the same household would have duplicate items of this type and value.

According to FEMA, these duplicate payments occurred because verification standards had been relaxed following Hurricane Katrina. However, for Duplication of Benefit cases, FEMA requires applicants to prove that they lived in separate households or lacked knowledge that others in their household applied for assistance. The applicant's case file lacked evidence indicating either of these requirements.





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- **Ownership Not Verified:** The applicant registered as an uninsured property owner when, in fact, she did not own the residence. FEMA paid the applicant a total of \$17,040 (\$12,021 for home repair and \$5,019 for rental assistance and other needs). The records show that the FEMA housing inspector at the time incorrectly identified the applicant as the residence's owner. FEMA initially scheduled the applicant for recoupment because the applicant falsely reported that she owned the damaged residence and therefore was not eligible for the \$12,021 to repair the home.

The waiver case file concluded that the improper payment occurred because of FEMA error on the part of the home inspector, who did not discover that the applicant was not the true owner. We do not disagree that the home inspector is a good internal control that FEMA uses to verify information provided by applicants, but the applicant improperly received the \$12,021 to repair the home she did not own because she provided FEMA false or misleading information at the time of registration.

- **Not Primary Residence/Ownership Not Verified:** On September 5, 2005, the applicant registered online as the owner with an active insurance policy for the damaged dwelling and received \$19,573 for expedited assistance, home repair, rental assistance, transportation, and personal property loss. FEMA regulations prohibit applicants from receiving individual assistance for damaged dwellings that are not their primary residence.

According to the case file, the applicant was being recouped because FEMA discovered that the damaged dwelling address was not the applicant's primary residence at the time of the disaster. The application requires the disaster survivor to indicate whether the damage dwelling is her primary residence in a distinct, yes or no question. She annotated yes on her application. FEMA requested that applicant verify primary residence and ownership of the damaged dwelling after the initial registration. The overpayment provided to the applicant is a FEMA error because the funds received were a result both of applicant fault and FEMA internal controls being lowered or processes being changed in order to expedite assistance. FEMA paid the applicant despite possessing information of fault. Although there was evidence of ownership in the case file, there was no evidence that this was her primary residence.



### **FEMA Waived Disaster Relief Debt Based on Adequate Information**

The majority of the cases review (about 70 percent) had sufficient information to satisfy all the waiver criteria set forth in both DARFA and FEMA's implementing regulations, including debtor fault. For example, a number of debtors in our sample received duplicative expedited assistance payments because FEMA inadvertently sent applicants a second payment. Because the applicant did not request the second payment, FEMA caused the second payment and the debtor was not at fault.

Another group of debtors for whom FEMA had sufficient information to waive the debt included applicants who previously received disaster assistance and were required to obtain and maintain flood insurance. In a draft to this report, we identified an applicant who registered as the owner of a damaged dwelling and received \$25,600 in disaster assistance. A portion of that amount was for housing repair. We initially considered the improper payment associated with housing repair to be caused by the debtor because he (1) previously received replacement housing for a previous flood-related disaster and were therefore on notice of the requirements for future assistance, and (2) he failed to maintain flood insurance on the damaged property. FEMA requires the applicants who received previous flood related disaster assistance to obtain and maintain flood insurance on the damaged property as a condition of the initial assistance.

FEMA took exception to our interpretation that the debtors caused the improper disaster assistance payments when they failed to maintain the required flood insurance. We initially considered the debtors as causing this group of improper payments because they did not inform FEMA of their previous disaster assistance or their failure to maintain flood insurance. Based on FEMA comments we reevaluated our assessment of all the cases we questioned. As a result of that second review, we reversed our assessment for the flood insurance cases. Unlike the questions on FEMA's application specifically asking such things as (1) if this is or is not your primary residence, (2) if you own or rent the property, or (3) who are the occupants and dependents living at the primary residence at the time of the disaster; FEMA did not specifically ask registrants if they received previous flood related disaster assistance. Rather, FEMA simply asked the registrant if they had insurance and the types they had. Therefore, for the flood insurance cases, we agreed with FEMA that it had that sufficient information to conclude that the debtor did not cause the improper payment.

### **Cost Associated With Adjudicating DARFA Request**

FEMA provided OIG with information regarding its DARFA waiver actions and estimated costs since December 2011. As of December 10, 2012, FEMA adjudicated 20,369 cases totaling \$112,692,663 that were initially identified for recoupment. Of that amount,



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FEMA has granted waivers for applicants in approximately 86 percent of the cases it has reviewed. Specifically, FEMA has granted 17,517 waivers and denied 2,852 waivers totaling \$97,664,769 and \$15,027,894, respectively. FEMA has recouped \$2,774,295 from denied waivers. FEMA has expended an estimated \$9,569,776 on related activities. This includes planning and implementing provisions of the process, training employees, and conducting waiver activities.

Table 2 summarizes FEMA’s decisions on the 20,369 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 table 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 before authorizing payment, or adoption of a new policy during a disaster.

**Table 2. FEMA Granting or Denying DARFA Waivers**

| Reasons for Debt Recoupment                                  | Occurrences   | Waivers Granted     | Occurrences  | Waivers Denied      |
|--|---------------|---------------------|--------------|---------------------|
| Duplication of Benefits With Household Member                | 6,880         | \$52,050,604        | 677          | \$4,275,540         |
| Duplication of Benefits With Insurance                       | 1,493         | 7,866,335           | 631          | 4,136,686           |
| Another Member of Household Received Insurance               | 720           | 5,964,545           | 61           | 464,625             |
| Housing Assistance Overpayment Home Repair/Rental Assistance | 2,950         | 6,879,435           | 400          | 1,421,070           |
| Occupancy Not Verified                                       | 3,566         | 7,940,623           | 708          | 1,873,942           |
| Not Primary Residence (Students)                             | 904           | 2,704,335           | 119          | 348,190             |
| Not Primary Residence  | 660           | 3,427,617           | 127          | 840,782             |
| Other  | 3,579         | 10,831,275          | 557          | 1,667,059           |
| <b>Total</b>   | <b>20,752</b> | <b>\$97,664,769</b> | <b>3,280</b> | <b>\$15,027,894</b> |

Source: FEMA.

Table 3 lists the costs 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, and a majority of FEMA’s adjudicators at the Virginia National Processing Service Center have received training to answer DARFA waiver applicant questions.



**Table 3. DARFA Total Estimated Costs**

| Category             | Cost               |
|----------------------|--------------------|
| FEMA Staff           | \$5,548,537        |
| Contracting          | 111,339            |
| Applicant Refunds    | 3,909,900          |
| <b>Overall Total</b> | <b>\$9,569,776</b> |

Source: FEMA.

FEMA continues to process DARFA cases; therefore, it is too early to determine the cost-effectiveness of this project. This issue will be addressed in future reports as information becomes available.

## Management Comments and OIG Analysis

FEMA disagrees with our conclusion that a number of sample DARFA cases lacked adequate support to be waived.<sup>2</sup> According to FEMA, contrary views on waiver requirements resulted from differing interpretations of DARFA's legal requirements by FEMA and OIG.

FEMA makes the claim that because all DARFA applicants received improper payments, any consideration of an individual's eligibility for disaster assistance is irrelevant to a waiver determination. FEMA concludes that it cannot require debtors to provide evidence of eligibility for assistance as a condition for a waiver. However, DARFA and FEMA guidance specifically state that debts may not be waived if there was any fault by the debtor; they do not make an exception for fault in claiming eligibility.

FEMA asserts that the OIG interprets the law to require an assessment of eligibility to weigh debtor fault. The agency says DARFA assumes each debtor who receives a waiver is ineligible for the assistance they received; nevertheless, allows them a waiver provided the debtor did not know or should not have known he was receiving an overpayment. Furthermore, FEMA does not consider it necessary for the debtor to demonstrate that he was not at fault for receiving and improper payment. FEMA states that Congress intended a broad application of DARFA and thus it stated in its Management Directive that fault would be narrowly construed in favor of the debtor and presume that the majority of debtors were not at fault due to FEMA error. A copy of FEMA's comments in their entirety is in appendix B.

<sup>2</sup> We provided FEMA with a discussion draft report that contained preliminary results. At the time, we were in the process of vetting our review of sampled DARFA cases. Subsequently, these results changed.



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We acknowledge a difference of opinion on interpreting DARFA requirements. But the OIG does not take the position that DARFA requires an assessment of eligibility for all applicants or that applicants must affirmatively prove lack of fault. We state only that FEMA's files lacked documentation for waiver decisions in many cases, and that FEMA should not have ignored indications of fault. We believe that the actions an applicant takes at the time of disaster assistance registration indicating fraud or fault should be properly considered in the adjudication of DARFA cases. Thus, we did not consider a FEMA error to negate debtor fault automatically. DARFA section 2 (A) states that FEMA may waive a debt if "...there was no fault on behalf of the debtor." In addition Section 2 (B) states that FEMA "...may not waive a debt ... if the debt involves fraud, the presentation of a false claim, or misrepresentations by the debtor ..." Thus, if according to FEMA rules the improper payment occurred because the debtor made a false representation concerning such things as (1) owning a home that they rented, (2) other individuals at the same address did not receive benefits for the same damaged property, (3) the damaged dwelling was not their primary residence at the time of the disaster, or (4) not maintaining flood insurance because they previously received disaster assistance on the same property; absent evidence to the contrary, DARFA Sections 2 (A) and (B) do not authorize FEMA to waive the debt because improper payment occurred because of debtor actions.

Clearly, DARFA does not require a re-examination of each applicant's eligibility for disaster assistance; rather, we interpret DARFA and the Management Directive to require FEMA to review the facts and circumstances of the debt and evaluate them against all the provisions of DARFA to grant a waiver. Additionally, it is not unreasonable to expect someone to be able to respond to questions about their residency status, such as where they live and if they rent or own. Furthermore, we believe it was reasonable to have invited the debtor to provide any information regarding why he or she did not cause the improper payment. FEMA's Notice of Waiver appropriately required an explanation of why it would be against equity and good conscience for FEMA to collect the debt, but the notice did not ask for a response on another DARFA requirement, fault. For example, FEMA considers inviting a debtor to provide information about eligibility for assistance to be a burden. We fundamentally disagree, and as we have stated previously, FEMA guidance requires a more thorough review of case file content when presented with fault or fraud indicators.





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Congress may have intended a broad application of DARFA; however, we did not interpret this to mean that evidence of debtor fault would be ignored. In their response, FEMA cites examples of two Senators to support its views on broadly granting waivers. They quote a press release of Senator Landrieu, but it does not address the issue of fault. They also quote Senator Pryor's testimony but we conclude that testimony supports the OIG view. Of course applicants are eligible for waivers when FEMA alone was at fault, as the example of the Arkansas couple in the Senator Pryor's example. But that couple was led astray by FEMA, and "made no mistakes. They followed the rules . . . There is no allegation of fraud or that the couple in any way misled anyone . . . [They were] "folks who had been playing by the rules." The Senator went on to say that "our bill will not give a blanket exception" for all benefits recipients. 157 Cong. Rec. S2394 (April 12, 2011).

Consistent with FEMA comments, we interpreted DARFA to mean that all relevant facts would be assessed equally. Additionally, reviewing the validity of FEMA's adjudications of DARFA waivers directly relates to our objective of evaluating the cost effectiveness of its efforts with this project. For example, in order to conduct a cost benefit analysis, we need to know what FEMA spent and waived, compared to what will be recouped.



## **Appendix A**

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

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the Department.

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 employees regarding the agency's processes for adhering to DARFA regulations. We also reviewed a statistical sample of DARFA cases for which FEMA granted waivers, in order to determine if FEMA granted waivers in accordance with DARFA requirements. To conduct our review, we obtained from FEMA a list of 13,363 DARFA cases (as of July 19, 2012) that it had waived for recoupment. Using the Interactive Data Exploration and Analysis software, we randomly selected 285 for our sample. We used FEMA's National Emergency Management Information System to analyze the cases to determine if they met DARFA requirements for a waiver. For cases that were identified as Duplication of Benefits, we reviewed the cases of linked applicants. Fieldwork was conducted at FEMA headquarters in Washington, DC, and at the National Processing Service Center in Winchester, VA.

We conducted this review between September and December 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.



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**Appendix B**  
**Management Comments to the Draft Letter Report<sup>3</sup>**

U.S. Department of Homeland Security  
Washington, DC 20472



**FEMA**

December 17, 2012

Kaye McTighe  
Director  
Mitigation and Disaster Assistance Division  
Department of Homeland Security  
Office of Inspector General  
245 Murray Lane, SW  
Washington, DC 20528

By Facsimile: (202) 254-4294

Dear Ms. McTighe:

The following constitutes the response of the Federal Emergency Management Agency (FEMA) to the draft fourth report of the Department of Homeland Security Inspector General (OIG) on FEMA's implementation of the Disaster Assistance Recoupment Fairness Act of 2011 (DARFA). It is FEMA's view that this report evidences FEMA and the OIG have significantly different interpretations of DARFA's legal requirements. This difference in interpretation inexorably leads to differing views about what is required to justify an agency determination that a debt should be waived. FEMA, therefore, takes exception to the OIG's conclusion in its draft report that FEMA lacked adequate support for 39% of the cases it waived.

As you are aware, DARFA provides extraordinary authority to FEMA to waive certain debts owed to the United States if the debt resulted from FEMA error, there was no fault on behalf of the debtor, and collection of the debt would be against equity and good conscience. In addition, FEMA may not waive any debt under DARFA if the debt involves fraud, the presentation of a false claim, or misrepresentation by the debtor or any party having an interest in the claim. FEMA guidance implementing DARFA was published in the Federal Register as a Management Directive.

As an initial matter, FEMA interprets DARFA as rendering moot any consideration of a particular individual's eligibility for disaster assistance. The waiver provision authorized by DARFA is explicitly limited to "a debt owed to the United States." By definition, therefore, the only individuals eligible to apply for a DARFA waiver are debtors and they cannot be debtors unless they received an overpayment. Fundamentally, therefore, FEMA cannot require debtors to demonstrate eligibility for assistance as a condition to providing a waiver under DARFA. Such a requirement would render DARFA meaningless.

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<sup>3</sup> We provided FEMA with a discussion draft report that contained preliminary results. At the time, we were in the process of vetting our review of sampled DARFA cases. Subsequently, these results changed.



## Appendix B Management Comments to the Draft Letter Report

Kaye McTighe  
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The OIG's draft fourth report takes issue with the lack of FEMA Job Aid instructions for analyzing duplication for personal property and for verifying that multiple applicants did not relocate to the same address. In its first bulleted example of a case FEMA waived "despite lacking sufficient evidence to do so," the OIG states the applicant failed to submit any evidence proving she either lived in a separate household or that she lacked knowledge that others in the household applied for assistance. In its third bulleted example, the OIG indicates the applicant failed to provide evidence the home was her primary residence. In our view, these statements indicate the OIG's view of DARFA departs significantly from FEMA's interpretation of the law.

FEMA interprets DARFA as not requiring a re-examination of eligibility, making it unnecessary to, for example, require an applicant demonstrate a home was her primary residence. Numerous public and floor statements made by the drafters of DARFA support our view in this matter. For example, Senator Mary Landrieu said, "I expect FEMA to make sure it does not unfairly target people who had a legitimate need for help, or those who lost legal documents, leaving them unable to prove their eligibility for assistance."<sup>1</sup> Similarly, Senator Mark Pryor, in his floor statement, related the case of an Arkansas couple who were clearly ineligible for assistance, but received a maximum grant due to FEMA error. Senator Pryor explained, "We wish to give the FEMA Director the authority to have some discretion on some of these hardship type cases, especially where the person who received the benefit did it purely by a FEMA error."<sup>2</sup> Thus, we believe it is clear that the principal sponsors of DARFA designed it precisely to allow FEMA to waive debt where otherwise ineligible applicants received money from FEMA.

The OIG appears, however, to interpret the law as requiring an assessment of eligibility in order to weigh whether there was debtor fault. Respectfully, FEMA suggests this is not required by the law and is a circular argument. We believe DARFA assumes each debtor who receives a waiver is ineligible for the assistance they received and nevertheless allows a waiver for these persons provided the debtor did not know or should not have known he was receiving an overpayment. The "know or should have known" standard must be judged against the often chaotic circumstances surrounding the provision of FEMA assistance and it is reasonable to assume that most individuals who apply for FEMA assistance have no specific knowledge about FEMA eligibility requirements. In addition, FEMA's ability to judge debtor fault is limited given the lengthy passage of time since the overpayments were first provided.

FEMA believes Congress intended a broad application of DARFA and thus stated in its Management Directive that it would construe the standard for debtor fault very narrowly in favor of the debtor and presume that the majority of debtors were not at fault, given the nature of FEMA's delivery of its assistance. Fundamentally, FEMA does not interpret DARFA as requiring debtors affirmatively to prove they were without fault. Where there was evidence of debtor fault in the record, we examined that evidence. We did not presume a debtor was at fault, however, merely because she failed to explain why she did not know she was ineligible for the overpayment she received. Again, the Congressional floor statements are illustrative. Describing the need for the legislation that would become DARFA, Senator Pryor reported a

<sup>1</sup> Press Release of Senator Mary L. Landrieu, dated January 5, 2011, [http://www.landrieu.senate.gov/?p=press\\_release&id=1249](http://www.landrieu.senate.gov/?p=press_release&id=1249).

<sup>2</sup> 157 Cong. Rec. S2394 (April 12, 2011)(statement of Sen. Pryor on S. 792), <http://www.gpo.gov/fdsys/pkg/CREC-2011-04-12/pdf/CREC-2011-04-12-pt1-PgS2389.pdf>





## Appendix B Management Comments to the Draft Letter Report

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case involving a couple who lived in a sanctioned community and were thus ineligible to buy flood insurance through the National Flood Insurance Program. In his remarks, the Senator makes clear the couple knew they lived in a sanctioned community, “They had paid their premiums out of their pockets as long as they could, as long as they could find insurance, and as that was canceled over the years, the county hadn’t come through.”<sup>3</sup> Still, the Senator argued that FEMA needed authority to waive this sort of debt, notwithstanding that anyone owning a home in a sanctioned community is, at a minimum, constructive notice that they are not eligible for disaster assistance.

In its fourth bulleted example, the OIG concludes it is reasonable to believe an applicant “knowingly failed to submit relevant information at the time of disaster” given the applicant had received FEMA assistance previously and failed to inform FEMA her flood insurance coverage had expired. This example perhaps best illustrates the difference between the FEMA and OIG legal interpretation. Applicants who allow their flood insurance coverage to expire are still eligible for some FEMA assistance. In executing DARFA FEMA presumed debtors were not aware of when the lapse of insurance coverage prevents FEMA assistance and when a lapse does not affect FEMA assistance. The OIG apparently believes FEMA was obligated by DARFA to require the debtor in this case to prove why she did not know she was ineligible for the assistance she received in order to demonstrate she was not at fault. FEMA does not believe DARFA requires debtors bear such a burden.

It is not entirely clear to FEMA why the OIG is assessing the validity of FEMA’s determinations with respect to debtor fault given DARFA directs the OIG to assess the cost effectiveness of FEMA’s efforts, not its substantive interpretation of the law. Nevertheless, as discussed during our conference call concerning this topic on December 14, 2012, FEMA recognizes that it and the OIG will likely agree to disagree on how DARFA should be applied with respect to debtor fault. Given our differences of legal interpretation, FEMA requests that when the OIG indicates in any report that FEMA did not have “adequate support to grant waivers,” that it also indicate its opinion in this regard is premised on a legal interpretation that differs from FEMA’s. This difference in interpretation then leads to a difference in opinion on what level of documentation in a file is appropriate before FEMA grants a waiver.

FEMA has not been provided an opportunity to address every case in the OIG’s statistical sample, however, we are confident we executed DARFA and the debtor fault prong of the law appropriately. We appreciate this opportunity for review and response.

Sincerely,

Adrian Sevier  
Deputy Chief Counsel

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<sup>3</sup> Id.





## **Appendix C**

### **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 that 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 less than or equal to \$90,000; and, subject to certain conditions, only a partial waiver to those with an adjusted gross income greater than \$90,000.



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

**Appendix D**  
**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, 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).</b></p> <p><b>I understand that the 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.</b></p> <p><b>I authorize FEMA to verify 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</b></p> <p><b>I authorize 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.</b></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 Presidentially-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 90-89 B



## **Appendix E**

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