

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 (2)






OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

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June 22, 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 (2)*

Attached for your information is our report, *FEMA's Efforts To Recoup Improper Payments in Accordance With the Disaster Assistance Recoupment Fairness Act of 2011 (2)*. As required by the subject legislation, we are reporting on the cost-effectiveness of FEMA's efforts to recoup improper payments. This is the second 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; and Stuart Josephs, Auditor.

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 DHS Inspector General to periodically report on the cost-effectiveness of FEMA's efforts to recoup improper payments. This is the second 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 survivors. 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 September 23, 2012, will cover our assessment activities up until September 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 has implemented a centralized review and case management process that was described in the first report of this series.

FEMA provided OIG with information regarding its DARFA waiver actions and estimated costs since December 2011. As of June 8, 2012, FEMA adjudicated 6,432 cases totaling \$37,094,697 that were initially identified for recoupment. Of that amount, FEMA has granted waivers for applicants in approximately 96 percent of the cases it has reviewed. Specifically, FEMA has granted 6,167 waivers and denied 265 waivers totaling \$35,497,327 and \$1,597,370, respectively. Additionally, FEMA has expended an estimated \$2,589,076 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. Consistent with the provisions of DARFA, before making a determination to waive a debt, FEMA Fraud Prevention and Detection Branch contacts OIG to ensure that FEMA's Waiver Review Group does not issue waiver notices to DARFA applicants who are subjects of open investigations or have been convicted of a crime. FEMA also agreed to refer to OIG applicant cases it believes involve potential fraud, false claim, or misrepresentation. However, FEMA is not coordinating with OIG concerning waiver requests if the excessive payment was based on FEMA error, there was no fault by the debtor, or collection of the debt is against equity and good conscience.

Table 1 summarizes FEMA's decisions on the 6,432 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



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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.

Table 1. FEMA Granting or Denying DARFA Waivers

Reasons for Debt Recoupment	Occurrences	Waivers Granted	Occurrences	Waivers Denied
Duplication of Benefits With Household Member	2,528	\$18,668,424	11	\$42,336
Duplication of Benefits With Insurance	629	\$3,245,853	195	\$1,295,138
Another Member of Household Received Insurance	261	\$2,196,794	0	0
Housing Assistance Overpayment Home Repair/Rental Assistance	856	\$1,820,391	22	\$75,821
Occupancy Not Verified	812	\$2,015,675	13	\$84,088
Not Primary Residence (Students)	467	\$1,476,691	0	0
Not Primary Residence	219	\$1,425,227	4	\$10,598
Other	1,388	\$4,648,272	34	\$86,148
Total	7,160	\$35,497,327	279	\$1,594,129

Source: FEMA.

Listed below are some examples of applicants who were deemed eligible for waivers:

- Two persons at the same address registered and received assistance as “head of household.” Normally, this duplication would be identified and rejected by FEMA’s internal control system, but because controls had been relaxed to expedite assistance delivery, payments were duplicated.
- At the time of registration, an applicant reported homeowner’s insurance coverage. Later, FEMA processed the case as eligible for home repair assistance without deducting the insurance settlement amount, thus creating a duplication of benefits – the applicant was paid both by FEMA and by the insurance company.
- In two instances, applicants received duplicate benefits from two federal agencies, the U.S. Department of Housing and Urban Development (HUD), and FEMA. In one case the applicant met the criteria to be eligible for initial rental assistance and Disaster Housing Assistance Program recertification. FEMA paid the



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applicant after HUD provided assistance. FEMA did not have internal controls in place that checked with HUD to ensure that applicants would not receive duplicate assistance.

Because the amount of debt that will be waived directly affects the cost-effectiveness of FEMA's efforts to recoup improper payments, OIG will be analyzing FEMA's adjudication process to determine if it follows the law, taking into account potential fraud, misrepresentation, or false claims by the debtor, which would preclude obtaining a waiver. Furthermore, OIG will determine whether the FEMA components that are involved in the DARFA process are adequately coordinating their efforts.

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 staff have been hired. Since May 14, 2012, FEMA has offered the DARFA Waiver Review Group overtime but FEMA said the amount of overtime paid has not been significant. Some FEMA staff have received training to answer DARFA waiver applicant questions.

Table 2. DARFA Total Estimated Costs

Category	Cost
FEMA Staff	\$2,469,786
Contracting	\$102,194
Applicant Refunds	\$17,096
Total	\$2,589,076

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 March and June 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) 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.



Appendix C

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