

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 (5)





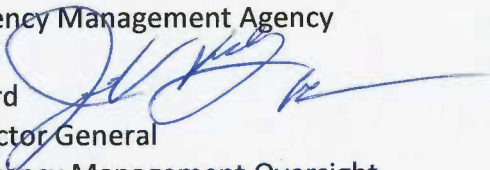
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Department of Homeland Security

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

MAR 22 2013

MEMORANDUM FOR: Edward Johnson
Chief Financial Officer
Federal Emergency Management Agency

Elizabeth A. Zimmerman
Acting 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 (5)*

Attached for your information is our final report, *FEMA's Efforts To Recoup Improper Payments in Accordance With the Disaster Assistance Recoupment Fairness Act of 2011 (5)*. As required by the subject legislation, we are reporting on the cost-effectiveness of FEMA's efforts to recoup improper payments. This is the fifth in a series of six reports that will be issued every 3 months through June 2013.

The report contains two recommendations aimed at ensuring FEMA reviews and processes Disaster Assistance Recoupment Fairness Act of 2011 debt recoupment cases. Your office concurred with both recommendations. As prescribed by the Department of Homeland Security Directive 077-01, Follow-Up and Resolutions for Office of Inspector General Report Recommendations, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until your response is received and evaluated, the recommendations will be considered open and unresolved.

Consistent with our responsibility under the *Inspector General Act*, we are providing copies of our report to appropriate congressional committees with oversight and



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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, Deputy Assistant Inspector General, Office of Emergency Management Oversight, at (202) 254-4100.

Attachment



Background

The *Disaster Assistance Recoupment Fairness Act of 2011* (DARFA; Division D, Section 565 of the *Consolidated Appropriations Act, 2012*, P.L. 112-74) provides a limited-time, discretionary authority for the Federal Emergency Management Agency (FEMA) Administrator 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 fifth 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 the original estimate and determined that 91,178 recipients, who received more than \$418.3 million, were candidates for recoupment.¹ 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 \$203.3 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

In March 2012, the Office of Inspector General (OIG) met with Senate Committees on Homeland Security and Governmental Affairs and Appropriations, and the House Committees on Homeland Security, Transportation and Infrastructure, and Appropriations to discuss the reporting ground rules (listed below) the OIG will follow pursuant to DARFA (§ 565(b)(4)).

¹ This debt amount is based on the average amount Notice of Waiver letter recipients received. FEMA originally estimated that the candidates for recoupment received more than \$371 million.



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, or 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 June 23, 2013, will cover our assessment activities up until June 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

Consistent with the provision of the *Debt Collection Improvement Act*, FEMA needs to review and process nearly 30,000 DARFA debt recoupment cases totaling approximately \$130 million. Specifically, FEMA needs to (1) refer to the Treasury Financial Management Service's Offset Program (Treasury) nearly 7,000 cases totaling about \$29 million where the debtor's response time to FEMA inquiries has expired; and (2) review and process the remaining cases totaling over \$101 million, whether debts are collected or compromised internally by FEMA or referred to Treasury for collection.²

In addition, contrary to FEMA's Management Directive: *Waiving Debts Pursuant to the Disaster Assistance Recoupment Fairness Act of 2011*, FEMA did not use a comprehensive quality assurance assessment to adjudicate DARFA waiver applications because it only reviewed debts FEMA initially determined it should not waive. FEMA's quality assurance assessment did not review any debts initially authorized a waiver.

Finally, as of March 8, 2013, FEMA granted waivers for applicants in approximately 86 percent of the cases it has reviewed. FEMA granted 17,496 waivers and denied 2,880 waivers totaling \$97,468,998 and \$15,227,128, respectively. FEMA has expended an estimated \$12,357,103 on related activities.

² The Treasury Offset Program is a centralized offset program, administered by the Treasury Financial Management Service's Debt Management Service, to collect delinquent debts owed to Federal agencies and states.



FEMA Needs To Expediently Process DARFA Debt Recoupment Cases

As of January 31, 2013, there are nearly 30,000 DARFA debts totaling over \$130 million for which FEMA needs to establish a payment plan; grant a compromise of the debt; or, if the debtor response time expires, refer to Treasury for collection. Of these DARFA debts, FEMA has identified nearly 7,000 eligible debts totaling approximately \$29 million that need to be referred to Treasury for collection.

After FEMA certifies a disaster applicant's debt, it provides the debtor with a Letter of Intent. This gives the debtor one last chance to resolve the debt. The debtor can pay the debt in full, negotiate a compromise, or request a payment plan. FEMA refers the debt to Treasury if the debtor does not respond to the Letter of Intent or defaults on an agreed upon payment plan. Before FEMA sends any debt to Treasury, FEMA reviews the case to ensure the debtor does not have a request for information evaluation, payment plan or compromise request in process, the debt has been modified or written off, or that there are no account adjustments.

FEMA mailed 88,808 Notice of Waiver letters totaling over \$407 million to eligible disaster survivors, providing them an opportunity to have their debts waived if the debt meets certain DARFA requirements. Originally, 91,178 candidates were eligible for recoupment. The number of debts decreased to 88,808 because some debtors had already successfully appealed, had been found guilty of fraud, had been ordered by a court to pay restitution, or were individuals who are deceased. As of January 31, 2013, more than 71,000 debts, totaling over \$309 million, had not been waived. FEMA certified about 67,000 of these debts; however, it is still processing approximately 4,000 other debts.

The *Debt Collection Improvement Act of 1996* requires Federal agencies to refer eligible delinquent non-tax debts to Treasury for debt collection action, if the agencies have not been successful at collecting those debts. Accordingly, FEMA already referred more than 35,000 debts to Treasury for collection; however, FEMA has nearly 30,000 additional debts valued at more than \$130 million to process. The remaining debts include approximately 7,000 debtors totaling nearly \$29 million, whose response time expired after receiving a Letter of Intent. We estimate that nearly 17,000 debtors totaling more than \$74 million will not respond to letters of intent, based on debtors not responding to prior FEMA inquiries.

Table 1 summarizes FEMA's efforts with processing DARFA debt cases.



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Table 1. FEMA’s Processing of DARFA Cases as of January 31, 2013

Status	Debtors (in Thousands)	Amount (in Millions)
Notice of Waivers Mailed	88.8	\$407.4
Debts Waived	(17.5)	(97.7)
Debts Not Waived	71.3	\$309.7
Denied	2.9	\$15.4
No Response to Notice of Waivers	65.0	281.1
Terminated/Deceased/Withdrawn	3.4	13.3
Being Processed	(4.1)	(17.2)
Debts Certified	67.2	\$292.6
Debts Certified	67.2	\$292.6
Debts Resolved	(2.3)	(5.0)
Debts Referred to Treasury	(35.1)	(157.4)
Debts Not Sent To Treasury	29.8	\$130.2
Debts Not Sent to Treasury	29.8	\$130.2
Debts to Refer to Treasury	(6.8)	(28.7)
Other Debts Not Settled	23.0	\$101.5
Debtors We Estimate Will Not Respond to Letter of Intent	16.8	\$74.1

Source: FEMA.

FEMA said that Superstorm Sandy hindered response efforts for processing DARFA cases. Specifically, seventy percent of the FEMA Finance Center’s staff deployed to assist with Superstorm Sandy thus slowing their efforts with processing DARFA debt recoupments. Though we understand and agree that this catastrophic event warranted diverting resources, FEMA needs to maximize its resources to promptly review and process these remaining cases in a timely manner.

FEMA’s Quality Assurance Review Did Not Include Assessing Waived DARFA Cases

FEMA did not review any DARFA-waived debts as a part of its quality assurance assessment. Rather, FEMA reviewed 31 percent of DARFA applicant cases that initially were deemed ineligible for a waiver. A FEMA official said that FEMA implemented extra checks and balances to ensure that waiver applicants were not improperly denied a waiver. For approvals, this official said that they believe that FEMA eligibility criteria were sufficiently specific to provide appropriate guidance and ensure that applications for waivers were not improperly approved. Therefore, FEMA did not establish a review



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process for waived debt. However, from our December 2012 report, we determined that about 30 percent of the adjudicated debt cases we reviewed did not have adequate support to grant waivers.³ That finding sheds doubt on the underlying assumption that FEMA adjudicators properly applied the DARFA waiver criteria.

FEMA's Management Directive: *Waiving Debts Pursuant to the Disaster Assistance Recoupment Fairness Act of 2011*, calls for FEMA to ensure that the review process is as consistent and fair as possible. We believe that a quality assurance assessment that only reviewed initial decisions recommending waiver denial, and not reviewing any of the adjudicators' decisions to waive disaster assistance recipient's debt, does not ensure the criteria were consistently and fairly applied. The intent of DARFA was not just to grant waivers to disaster survivors who applied for a waiver, but also to safeguard taxpayer funds from waiving debts that did not meet the criteria in the law. Therefore, only a comprehensive quality assurance assessment that includes reviewing both denied and waived DARFA cases helps to ensure they are consistently adjudicated according to DARFA and FEMA regulations.

FEMA provided OIG with information regarding its DARFA quality assurance assessment and we determined that FEMA reviewed 460 denied cases. As of January 31, 2013, FEMA denied 2,876 debts that did not meet DARFA requirements for a waiver. FEMA eliminated 1,404 cases because debtors never responded to FEMA's request for information or did not appear for an oral hearing. This left FEMA to assess 1,472 denied cases. FEMA reviewed approximately 31 percent (460) of these cases.

FEMA determined that 25 of the reviewed 460 originally denied debts warranted a waiver. For most of these 25 debts, we concur with FEMA that information in the case files warranted granting a waiver. 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 mistakes, 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 in the midst of a disaster.

The following are examples of debts that FEMA overturned and waived for which we did not see sufficient evidence in the case file to grant a waiver.⁴

³ OIG-13-17, *FEMA Efforts To Recoup Improper Payments in Accordance With the Disaster Assistance Fairness Act of 2011 (4)*, December 2012.

⁴ FEMA originally referred these cases to OIG for potential fraud; however, they were not pursuable because the statute of limitations expired. OIG sent cases back to FEMA for administrative action.



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- **Housing Assistance Overpayment:** The applicant registered as an uninsured renter of the damaged dwelling. FEMA paid the applicant \$20,962 for personal property, rental assistance, and expedited assistance. FEMA placed the applicant in recoupment because she improperly received \$10,391 in assistance for personal property.

According to the case file, the residence's head of household, the applicant's grandmother, said that the applicant never lived at the damaged dwelling and fraudulently used her address to obtain FEMA assistance. The head of household produced a lease that showed the applicant was not authorized to live at the damaged dwelling. The applicant refuted this claim, indicating that she did live at the residence; however, she never provided proof of her residency status. Additionally, Department of Housing and Urban Development documents showed that only the grandmother and great-granddaughter lived at the damaged dwelling.

Subsequently, the applicant stated that she had another residence at the time of the disaster that she did not use. The applicant again claimed that her primary residence was her grandmother's residence, which FEMA indicated that it verified. However there is no information in the case file documenting how FEMA verified residency. FEMA said the overpayment provided to the applicant is its error because an agent changed the status of the case to "not duplicate." Consequently, this allowed the case to be eligible for disaster assistance. Although FEMA made a clerical error, case file information suggests possible debtor fault, which precludes granting a waiver.

- **Housing Assistance Overpayment:** The applicant registered with a FEMA agent as an uninsured renter of the dwelling and received \$10,004 for rental and expedited assistance. The records show that the applicant had two registrations with different addresses. The applicant said that the registration with the wrong address was completed by another individual. There was no indication in the case file that the applicant ever established primary residency.

FEMA provided the applicant with initial rental assistance and then additional rental assistance upon recertification. Documentation shows that rental receipts and leases the applicant provided were from a different residence than the one claimed. The rent receipts and the lease were altered and included only the first and last pages.



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Additionally, the property's landlord stated that the applicant never resided at the rental address. For rental recertification, the applicant used an apartment number that did not exist on the property. Consequently, when FEMA attempted to advise the applicant on rental recertification, the letter was returned.

Case file records indicate that the applicant received rental and expedited assistance as a result of internal controls being lowered and the system not cross-referencing the applicant. There is no evidence in the case file that warrants the debtor receiving a waiver. The debtor provided altered receipts and leases for residences never occupied and, as mentioned above, the property's landlord stated that the applicant did not reside at the rental address.

Cost Associated With Adjudicating DARFA Request

FEMA provided OIG with information regarding its DARFA waiver actions and estimated costs since December 2011. As of March 8, 2013, FEMA adjudicated 20,376 cases totaling \$112,696,126 that were initially identified for recoupment. FEMA has granted waivers for applicants in approximately 86 percent of the cases it has reviewed. Specifically, FEMA has granted 17,496 waivers and denied 2,880 waivers totaling \$97,468,998 and \$15,227,128, respectively. FEMA has expended an estimated \$12,357,103 on related activities. This includes planning and implementing provisions of the process, training employees, conducting waiver activities, and processing debts.

Table 2 summarizes FEMA's decisions on the 20,730 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.



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Table 2. FEMA Granting or Denying DARFA Waivers as of March 8, 2013

Reasons for Debt Recoupment	Occurrences	Waivers Granted	Occurrences	Waivers Denied
Duplication of Benefits With Household Member	6,889	\$52,110,645	683	\$4,327,931
Duplication of Benefits With Insurance	1,493	7,866,335	634	4,169,404
Another Member of Household Received Insurance	721	5,966,704	62	475,016
Housing Assistance Overpayment Home Repair/Rental Assistance	2,951	6,879,435	408	1,454,313
Occupancy Not Verified	3,511	7,506,911	717	1,909,577
Not Primary Residence (Students)	908	2,717,339	121	352,548
Not Primary Residence	673	3,567,516	129	860,262
Other	3,584	10,854,113	565	1,676,275
Total	20,730	\$97,468,998	3,319	\$15,225,326

Source: FEMA.

Table 3 lists the costs that FEMA has incurred implementing the DARFA provisions. 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 have received training to answer DARFA waiver applicant questions.

Table 3. DARFA Total Estimated Costs as of March 8, 2013

Category	Cost
FEMA Staff	\$6,400,455
Contracting	111,581
Applicant Refunds	5,845,067
Overall Total	\$12,357,103

Source: FEMA.



Conclusion

FEMA has outstanding DARFA recoupment cases that it needs to review and process. FEMA must collect, grant a compromise for, or refer these debts to Treasury for collection. Additionally, as part of its quality assurance assessment, FEMA only reviewed DARFA-denied cases. Only by reviewing denied and waived DARFA cases can FEMA assess whether its adjudicators are consistently processing cases in accordance with DARFA and FEMA regulations.

Though FEMA's review of DARFA cases has concluded, FEMA is still processing cases for recoupment. Our next report will provide our assessment of the cost effectiveness of FEMA's efforts to recoup improper payments in accordance with DARFA.

Recommendations

We recommend that FEMA's Chief Financial Officer and Acting Associate Administrator, Response and Recovery:

Recommendation 1:

Continue to review and refer DARFA debt recoupment cases totaling approximately \$29 million to Treasury since the debtor's response time to FEMA inquiries has expired.

Recommendation 2:

Continue to review and process the remaining DARFA debt recoupment cases totaling more than \$101 million.

Management Comments and OIG Analysis

Recommendation 1:

FEMA concurred with this recommendation and said it will continue to review and refer DARFA debt recoupment cases to Treasury since the debtor's response time to FEMA inquiries has expired.

We consider this recommendation resolved because steps are being taken to implement it; however, it will remain open until evidence is provided that FEMA has reviewed and referred applicable debt recoupment cases to Treasury.



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Recommendation 2:

FEMA concurred with this recommendation and said it will continue to review and process the remaining DARFA debt recoupment cases.

We consider this recommendation resolved because steps are being taken to implement it; however, it will remain open until evidence is provided that FEMA has reviewed and processed debts whether they are collected or compromised internally by FEMA or referred to Treasury for collection.



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 reviewed FEMA Finance Center's efforts to process DARFA debt recoupment cases. We also reviewed DARFA cases that FEMA originally denied but waived as a part of its quality assurance assessment. 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.

We conducted this review between December 2012 and March 2013 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 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 (Division D, 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.



Appendix C

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