



Department of Homeland Security Office of Inspector General

Opportunities to Improve FEMA's Public Assistance Appeals Process





**Homeland
Security**

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Preface

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 published as part of our oversight responsibilities to promote economy, effectiveness, and efficiency within the department.

This report addresses the strengths and weaknesses of the Federal Emergency Management Agency's Public Assistance appeals process. We contracted with the independent public accounting firm of Foxx & Company to perform the audit. The contract required that Foxx & Company perform its audit according to generally accepted government auditing standards.

Foxx & Company is responsible for the attached auditor's report dated, February 3, 2010, and the conclusions expressed in the report.

The recommendations herein have been developed with the best knowledge available to our contractor. We trust that this report will result in more effective, efficient, and economical operations. We express our appreciation to all who contributed to the preparation of this report.

A handwritten signature in black ink, appearing to read "Matt Jadacki".

Matt Jadacki
Assistant Inspector General
Office of Emergency Management Oversight



February 3, 2011

Mr. Matt Jadacki
Assistant Inspector General for Emergency Management Oversight
Office of Inspector General
Department of Homeland Security
245 Murray Drive, SW, Building 410
Washington, DC 20528

Dear Mr. Jadacki:

Foxx & Company performed an audit of the Federal Emergency Management Agency's (FEMA) Public Assistance appeals process. The audit was performed according to Task Order No. TPDFIGBPA070007, Task Order No. 0001, dated September 28, 2009.

This report presents the results of the audit and includes recommendations to improve FEMA's timeliness in processing appeals, appeal decision reporting, and service to Public Assistance applicants.

Our audit was conducted according to applicable *Government Auditing Standards*, July 2007 revision. The audit was a performance audit as defined by Chapter 1 of the *Standards*, and included a review and report of program activities with a compliance element. We did not perform a financial audit, the purpose of which would be to render an opinion on the agency's financial statements.

We appreciate the opportunity to have conducted this audit. Should you have any questions, or if we can be of any further assistance, please call me at (513) 639-8843.

Sincerely,

Foxx & Company

Martin W. O'Neill
Partner

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Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FEMA	Federal Emergency Management Agency
FY	fiscal year
OIG	Office of Inspector General
PA	Public Assistance
USC	United States Code

OIG

*Department of Homeland Security
Office of Inspector General*

Executive Summary

Improvements are needed in the Federal Emergency Management Agency's process for resolving Public Assistance Program appeals. The Public Assistance Program provides assistance for emergency work and permanent work after a presidentially declared disaster. Project worksheets provide the basis for awarding grants and document the location, damage description, scope of work, and cost estimates for each project. Local governments applying for grant funds can appeal Federal Emergency Management Agency decisions concerning project eligibility or ineligible costs. The appeal process provides an opportunity for applicants to have eligibility and funding issues resolved.

Although delays occurred at all levels, the delays within headquarters were the most significant. As a result of the delays, appeals remained open for long periods and issues concerning project eligibility and costs remained unresolved.

The agency's tracking system did not include the time regional staff took to review and forward second-level appeals to headquarters; only the headquarters time was reported. As a result, the tracking system understated the time required to resolve second-level level appeals. The regional time averaged about 110 days for second-level appeals.

Also, the agency did not have an effective process for providing feedback on appeals. It was difficult for states to provide applicants information on the status of open appeals. In addition, although applicants can view past second appeal decisions online, the online system has not been updated with case information since October 2009.

We are making seven recommendations to improve the agency's timeliness in processing appeals, appeal decision reporting, and service to Public Assistance applicants. The agency's response to our recommendations is summarized and evaluated in the body of this report and included in its entirety as appendix B.

Background

Under the *Stafford Act* (42 USC 5121 et seq.), a Governor may request declaration of a major disaster when effective response and recovery are beyond the capabilities of the state and affected local governments. The *Stafford Act* defines the Federal Emergency Management Agency's (FEMA's) role during a declared disaster.

One of the grant programs available to assist response and recovery is the Public Assistance (PA) grant program. Under the PA program, FEMA provides grants to state and local government agencies, authorized tribal organizations, and specific types of nonprofit organizations to help them respond to and recover from a presidentially declared disaster. The PA program provides assistance for emergency work (such as debris removal) and permanent work (such as repairing and replacing damaged buildings, utilities, roads, and bridges). Project worksheets provide the basis for awarding grants and document the location, damage description, scope of work, and cost estimates for each project.

The PA program is a supplemental assistance grant program through which FEMA reimburses applicants for eligible disaster-related expenses. The program does not fund the full cost of recovery. The PA program provides grants, at a federal cost share of not less than 75%, for eligible projects. States and applicants bear the non-federal share of eligible project costs and the cost of any work that is not eligible under the *Stafford Act* and FEMA's regulations.

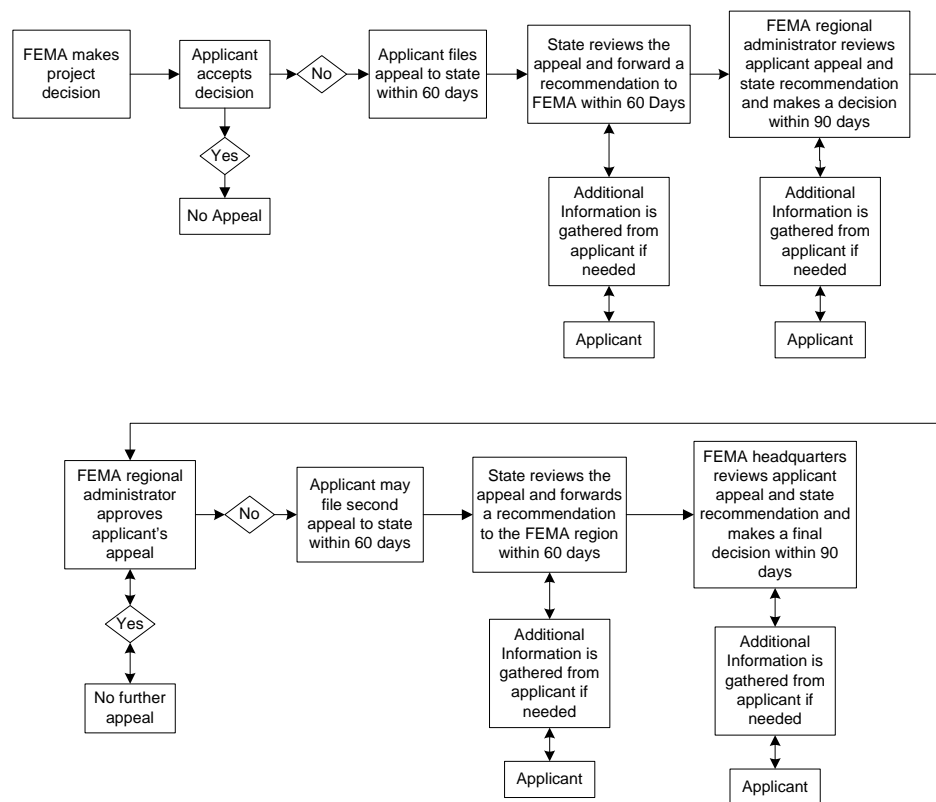
Federal, state, and local officials each play a significant role in administering the PA funding process. FEMA manages the program, approves grants, and provides technical assistance to states and applicants. The state is the grantee and the local government or equivalent entity is the subgrantee or applicant that receives the funding. The states educate potential applicants, work with FEMA to manage the program, and implement and monitor grants awarded under the program. Applicants are responsible for identifying damages, submitting PA requests, and completing recovery efforts approved under the program.

Applicants for grant funds can appeal FEMA decisions concerning project eligibility or costs. The appeals process provides an opportunity for applicants to have eligibility and funding issues resolved. Appeals of FEMA decisions can be filed at any time during the recovery process, including during project closeout.

There are two levels of appeal. If FEMA denies a project decision, the applicant can file a first-level appeal. An applicant has 60 days to file a written appeal with supporting documentation to the state. The state then has 60 days to review the appeal and forward it to the FEMA regional office. The Regional Administrator must provide a written decision to the state within 90 days of the first-level appeal.

If the first-level appeal is denied, the applicant and state each have another 60 days to process a second-level appeal. The regional office reviews the second-level appeal and forwards it to headquarters, where a decision is required within 90 days of receipt. The process and time limits for appealing funding decisions are established in Title 44 Code of Federal Regulations (CFR) § 206.206. Figure 1 describes the appeals process.

Figure1. FEMA’s Public Assistance Appeals Process



Results of Audit

To provide applicants timely appeal decisions, FEMA needs to improve its processing procedures, database tracking system, and status feedback process. These areas for improvement are discussed in the following sections.

Processing Delays

Delays occurred at all processing levels: applicant, state, FEMA regional, and FEMA headquarters. As a result of the delays, appeals remained open for long periods and issues concerning project eligibility and costs remained unresolved.

Applicant and State Delays

Summary data on the time it took applicants to submit appeals were not maintained. Our sample of 30 first-level appeal case files showed that applicants submitted 83% of the appeals within the required 60-day period. However, when the appeal was not submitted on time, FEMA procedures allowed the region to determine whether the applicant's appeal would still be accepted. Regions were inconsistent in denying late appeals. Some officials were more concerned about the merits of the appeal rather than time and made decisions on a case-by-case basis.

State officials are required to submit applicant appeals to FEMA within 60 days of receiving an appeal from an applicant. However, the officials said there have been periods when workload or other priorities prevented timely action on appeals. None of the five states we visited kept summary data on compliance. Our review of 30 first-level appeal cases showed that states forwarded 70% of the appeals to FEMA within 60 days.

State interactions with FEMA regions were inconsistent and contributed to appeals-processing delays. For example, upon receiving the applicant's appeal letter, states sometimes provided a copy to the region. This practice alerted FEMA that an appeal was being reviewed at the state level and provided an opportunity for follow-up if the 60-day period was approaching. Other states did not follow this practice. Also, some states did not submit appeals timely because some regional officials were willing to process late requests.

FEMA Regional Delays

Delays existed in processing first-level appeals in the three regions sampled. The regions took more than 90 days to make decisions on 17 (57%) of the 30 appeal cases. In addition, data provided by the three regions showed that a wide range of processing times occurred on first-level appeals (see table 1).

Table1. FEMA Regional Office Processing Time

First-Level Appeals Processed October 2008 through February 2010		
Region	Average Processing Days	Completed in 90 Days
A	73	85%
B	132	39%
C	145	27%

Staffing methods used by the regions accounted for some of the time variances. One region did not assign staff just to resolve appeals. Program specialists had competing job priorities, including deployments to active disasters and project closeout duties. A second region used staff specifically assigned to evaluate appeals. Another region also used specifically assigned staff at one of its two recovery offices. The assigned staff (FEMA staff or contractors) maintained more subject matter expertise and focused on processing appeals. According to FEMA officials, regions that used assigned staff were more likely to process appeals in a timely manner.

FEMA Headquarters Delays

Headquarters officials said that second-level appeal decisions generally exceeded the established regulatory timeframes. As shown in table 2, the average number of days for second-level appeal processing has consistently exceeded the 90-day requirement.¹ For example, during fiscal years (FYs) 2009 and 2010, the average processing times were 194 and 227 days, respectively. During the 2-year period, headquarters issued 178 second-level appeal decisions, 16 of which took more than a year to process.

¹ The averages shown in table 2 were calculated after the agency's tracking system errors were corrected. See the finding later in this report concerning FEMA's second-level appeal tracking system.

Table 2. Average Processing Time for Second-Level Appeals

Fiscal Year	Average Number of Days
2003	163
2004	139
2005	137
2006	172
2007	223
2008	180
2009	194
2010 *	227

* FY 2010 from October 2009 through February 2010

Source: FEMA Headquarters PA appeal tracker reports on issued decisions

Our sample of 40 second-level appeal cases at headquarters illustrated that the structure of the PA approval process and the complexities of the appeals process contributed to the delays. FEMA officials agreed with this observation. After the PA program officials prepared and approved draft appeal decisions, the cases were sent to the Office of Chief Counsel for review and approval. After approval by the Office of Chief Counsel, the appeal cases were sent to the Disaster Assistance Directorate front office for final review and approval. If any clarification or additional support was needed, the cases were returned to the various headquarters offices. FEMA officials said that the respective reviewing officials were not always available to complete reviews in a timely manner because of their other duties.

FEMA management has not made second-level appeal processing a high priority. Various offices involved in the process were not given guidelines to complete work within a specific timeframe. Also, no overall goals were established to reduce appeal backlog. When priorities were established, positive results occurred. For example, in February 2010, FEMA headquarters had 63 active second-level appeals in process. Four of these appeals had been waiting for a decision for more than a year. When FEMA made appeals a priority, the backlog of pending appeal cases was quickly reduced to 27 cases.

Regions and headquarters track first- and second-level appeals, respectively. FEMA does not have a single appeals-tracking system to highlight problem cases. A reliable tracking system is needed to ensure that appeals are processed in a timely manner. Without such a system, cases could be misplaced for long periods, adding to the already lengthy appeals-processing time. In one region, records showed that a state mistakenly sent 25 first- and second-level appeals to the regional office rather than the local recovery office. Delays occurred until the recovery office detected the problem and started processing the appeals. Records from other regional offices showed that six second-level appeal cases were misplaced from 10 to 33 months before they were located and normal processing began.

The PA appeal process can take longer if the Regional Administrator or FEMA headquarters officials request additional information or technical advice on an appeal in order to reach a decision. Requests for additional documentation or information do not count against FEMA's region or headquarter processing time standards. The time that passes for applicants to respond is not tracked by FEMA. FEMA officials said that such requests were rare and records are not kept on the frequency of requests or response times. According to FEMA officials, requests for additional documentation or information resulting in delays are rare and more likely to occur at FEMA headquarters than in the regions. FEMA does not keep records on the number of requests or the time period for the delays that occur from the additional requests. As a result, this causes delays in the process but they are not recorded.

In December 2009, the Department of Homeland Security Office of Inspector General (DHS/OIG) reported² that FEMA did not have an agency-wide system for tracking appeals from submission dates to final determinations. In response, FEMA agreed to design an integrated appeals-tracking system. The new system will serve the needs of PA staff in the regions and headquarters. At the time of our review, the system was not in place, and FEMA officials told us it was considered a long-term goal.

Conclusion

Delays in processing appeals impact the applicant, the state, and FEMA operations. Until an appeal is decided, applicants have to

² *Assessment of FEMA's Public Assistance Program Policies and Procedures* (OIG-10-26, December 2009).

obtain other sources of funds to complete projects or pay contractors. Delays increase state and FEMA administrative costs of monitoring appeals and responding to inquiries concerning the status of appeals.

Recommendations

We recommend that the Associate Administrator, Response and Recovery:

Recommendation #1: Develop and implement procedures that—

- Require states to notify the appropriate FEMA region when an applicant submits an appeal,
- Require regions to follow up with the states on individual appeals that have not been forwarded to the region within the required timeframes, and
- Provide adequate staffing to expedite the resolution of appeals so that the mandated timeframes are met.

Recommendation #2: Analyze the headquarters' second-level appeals process and identify opportunities for improved effectiveness, such as establishing backlog reduction goals and standards for key steps in the process.

Recommendation #3: Establish realistic, achievable milestones to expedite FEMA-wide plans to develop and implement an integrated agency-wide appeals tracking system that will provide more visibility over the entire appeals process.

Management Comments and Contractor Analysis

FEMA did not concur with the first two parts of recommendation #1. However, FEMA did concur on the third part of the recommendation.

With respect to parts one and two of recommendation #1, FEMA said that the regulations do not provide a basis to require states to notify regional offices in advance of submitting appeals received from applicants to the regional office. FEMA said that the states and regions have and will continue to coordinate closely on Public Assistance issues, including appeals. FEMA also said that it is the state's responsibility, as a grantee, to forward an appeal to a FEMA regional office within the regulatory timeframe.

We agree that FEMA attempts to work closely with the state grantees on Public Assistance issues. However, because our audit disclosed that 30% of the appeals received by the state from applicants were not forwarded to the regional office within the 60-day requirement, we believe the states should be required to notify the regional office when an appeal is received. We further believe that the regional offices should follow-up on appeals that have not been forwarded to the region within the required timeframe.

With respect to part three of recommendation #1, FEMA said that, in addition to its permanent Public Assistance staff at headquarters and regional offices, FEMA procured technical assistance contracts in 2010 that are available to the regions and headquarters for support in preparing first and second appeal responses. FEMA said the contractors will help ensure that responses are prepared efficiently and completed and within the regulatory timeframes. Final decisions on appeals will be made by FEMA and not by contractors.

FEMA partially concurred with recommendation #2. FEMA said that by improving the second-level appeals review and concurrence process (through staffing additions, contracts, and improved tracking systems), the Public Assistance Division reduced the appeal backlog of 69 in 2009 to 21 by the end of 2010. FEMA's actions to reduce the backlog have been effective. However, the effort must continue or the backlog will likely increase again. In this regard, we believe that FEMA should institutionalize the emphasis on backlog reduction by setting goals and standards for key steps in the process.

FEMA acknowledges that strong internal coordination is required to meet the regulatory timeframes for appeal responses, and will continue to identify ways to streamline and improve the concurrence process and to establish timeframes for each step of the process. However, FEMA did not concur with the recommendation to establish separate standards or timeframes for individual steps in the process. FEMA said the agency was currently performing a Bottom Up Review of the Public Assistance program and will fully consider recommendations to improve program processes, including second-level appeals. Because several FEMA officials with various other job responsibilities are involved in the second appeal decision process, we believe that separate standards or timeframes would help ensure that everyone is held accountable for timely processing action.

FEMA also partially concurred with recommendation #3. FEMA said it is transitioning its current internal tracking software (WebCIMS) to the DHS approved *Intranet Quorum 3* (IQ) tracking software. According to FEMA, the IQ will manage agency-wide workflow and allow users to create, review or concur with memos or documents. Public Assistance headquarters will transition processing of second-level appeals as the Agency migrates to the new system.

As a long-term goal, FEMA is considering the development of an appeals tracking component within the Emergency Management Mission Integrated Environment (EMMIE) database that would provide applicants, states, and regions the capability to track the status of submitted appeals.

The procurement of technical support contractors to expedite responses to appeals, the identification of ways to streamline and improve the appeals process including the establishment of timeframes for each step in the process, and efforts to improve appeals tracking are positive steps toward improving the timeliness of the appeals process.

However, with respect to parts one and two of recommendation #1, we continue to believe that FEMA should require the states to notify the appropriate FEMA region when an applicant submits an appeal. We also believe that the regions should follow up with the states on individual appeals that have not been forwarded to the region within the required 60 day timeframe.

Within 90-days, the Associate Administrator, Response and Recovery, needs to outline specific corrective actions, with supporting documentation, requiring the states' to notify the appropriate FEMA region when appeals are received from applicants and requiring the region to follow up when delays occur at the state-level. The Administrator's actions need to develop a plan to ensure that the states provide appeals received from applicants to the regions within the required 60-day timeline.

Second-Level Appeals Tracking and Reporting

The tracking system used to monitor second-level appeals was inaccurate. It did not include the time regional staff takes to forward second-level appeal cases to headquarters and used incorrect formulas to calculate processing times. As a result, the actual time elapsed in the second-level appeals process was understated.

Regional Office Second-Level Appeal Processing

According to 44 CFR 206.206, FEMA headquarters is required to provide a decision within 90 days of receipt of an appeal. FEMA's procedures called for the 90-day response time to start when the second-level appeal is received in headquarters and entered into the database. Based on our discussions with regional and headquarters officials, the start of the 90-day period can be interpreted in different ways. Some officials said the regulations do not require the time spent by the region to process second-level appeals to be included in the overall time. Other officials believe that because all delays affect the applicant, the second-level appeals-processing time should start when the FEMA region receives the request.

Our review of 30 second-level appeals cases completed during FYs 2009 and 2010 showed that it took an average of about 110 days from the time regions received the appeal to the time headquarters received it. The delay occurred because headquarters did not provide guidance to regional offices on the timeframes expected to prepare the second-level appeal package. Guidance was also not provided on the extent of review effort expected at the regional level. These days were not considered part of the 90-day requirement within FEMA's tracking system. As a result, the 90-day required time period was effectively extended to 200 days.

Incorrect Calculation of Processing Times

In March 2010, we identified that the second-level appeals tracking system was reporting incorrect data to FEMA officials. Our review showed that errors were made during the calculation of how long it took to process second-level appeals.

From October 1, 2008, through February 2010, FEMA recorded 178 decisions. Our analysis of the timeframes for these decisions showed that in 129 cases (approximately 70%), the processing times were overstated by an average of more than 200 days. We provided this information to headquarters officials. They concluded that undetected inaccuracies occurred during a software conversion. As a result, incorrect formulas were used to calculate how long it took to process some of the second-level appeals. FEMA changed the formulas, and subsequent reports were accurate. The corrected reports were used to compare second-level appeals processing delays.

Conclusion

The tracking system understated the processing time because it did not track the time regional staff took to forward second-level appeal cases to headquarters. In addition, the processing time reported in the tracking system for second-level appeals included incorrect formulas, which made the report inaccurate. As a result, the processing times reported in the database tracking system did not provide a reliable source of information to FEMA officials and other interested parties concerning compliance with the required 90-day processing timelines.

Recommendations

We recommend that the Associate Administrator, Response and Recovery:

Recommendation #4: Establish time standards for the regional work performed on second-level appeals and include this time in the 90-day period that FEMA headquarters has to issue a final decision on a second-level appeal.

Recommendation #5: Establish procedures and appropriate controls to ensure that the second-level appeals data tracking system is reporting accurate data.

Management Comments and Contractor Analysis

FEMA partially concurred with recommendation #4. FEMA interprets 44 CFR §206.206(c)(3), consistent with Section 423 of the Stafford Act, to mean that when the Assistant Administrator receives the second-level appeal he/she has 90 days in which to render a decision regarding that appeal. Second-level appeals often identify new issues that were not raised in the first appeal, and may include documentation to support those new arguments. The regions provide the initial review of second-level appeals and supporting documentation and provide a recommendation in the Regional Administrator's Memorandum to the Assistant Administrator. FEMA said it does not plan to revise timeframes in the appeals process beyond what is currently expressed in the Stafford Act and appeals regulation.

FEMA said it will continue to actively identify ways to streamline the appeals review process, including reducing the time that regions review and transmit second appeals to headquarters. For example, FEMA is working to establish an

electronic file sharing system that will allow regions to transmit appeal documents electronically.

Because all delays affect the applicant, we believe FEMA's interpretation of when the 90-day requirement for second-level decisions should start is too narrow. FEMA's interpretation would not include the average of 110 days that it took for the regions to forward a second-level appeal to headquarters. The interpretation effectively increases the 90-day limit to about 200 days. The Associate Administrator, Response and Recovery, needs to reconsider the exclusion of regional processing time from the required second-level response time. Within 90 days, the Associate Administrator needs to outline specific actions that will decrease the time taken for processing and responding to second-level appeals and develop a plan to ensure that the corrective actions are implemented as intended.

FEMA concurred with recommendation #5. FEMA established a new internal appeals tracking system in January 2010. The tracking system requires Headquarters PA Division and all Regions to submit monthly reports that include a list of first and second appeals, the issue and amount disputed, status of appeal reviews, and final decisions. This tracking system helps ensure accurate reporting on second appeals.

The establishment of a new internal appeals tracking system in January 2010 that requires monthly reports will help ensure that accurate reporting on second appeals occurs. In addition, the electronic transmission of second-level appeal documents from the regions to headquarters will be a positive step in improving the timeliness of second-level appeal processing.

Within 90 days, the Associate Administrator, Response and Recovery, needs to provide a plan to ensure that the implementation of the proposed actions proceed as intended.

Opportunities to Better Serve PA Applicants

FEMA needs an effective process for providing feedback on the status of appeals to applicants. Applicants said it was difficult to follow the status of their appeals, and in some cases they have been unable to obtain their status. For several years, FEMA used its website to provide applicants and program officials with information on second-level appeal decisions. However, FEMA stopped entering new decision information into the site in October 2009. As a result, applicants, as well as state and FEMA

officials, did not have accurate information on the status of appeals or decisions.

In compliance with the *Government Performance and Results Act*, the goal of FEMA's PA program is to provide and deliver public assistance efficiently, effectively, and consistently with increased customer satisfaction. The agency's strategic plan commits to provide timely disaster assistance to communities. In accordance with 44 CFR § 206.206, applicants have an opportunity to request reconsideration of decisions regarding funding. Officials said that applicants who file an appeal are to be treated fairly and receive accurate and timely information on the status of appeals.

Status of Appeals

Applicants who filed appeals were critical of FEMA delays and had difficulty determining the status of the appeals or the reasons for delays. Applicants told us that FEMA's appeals process was not customer friendly. Under the existing appeal structure, the state was expected to follow up to resolve applicant inquiries. Applicants complained that meaningful feedback was not provided because state and FEMA points of contact were frequently not familiar with the appeal or not available to help. Delays also occurred when new staff members were assigned to review a case. The new reviewers required extra time to understand the issues of the appeal or sometimes disagreed with the previous reviewer's interpretation of eligibility.

FEMA has not provided appeal decisions within the timeframes required by regulations. Applicants and state officials said the appeals process is unfair because applicants are expected to submit their appeal actions within regulatory timeframes while FEMA takes longer than the required timeframes to make a decision. In addition, FEMA does not provide applicants sufficient feedback on the status of the appeals.

At the time of our audit, there was no process in place for applicants, states, and FEMA officials to share information on the status of appeals. FEMA has plans to develop an agency-wide tracking system. However, current plans do not include providing applicants and state officials with access to the system. In the meantime, applicants and state officials suggested that joint meetings to discuss appeals issues would be helpful. The officials added that having all parties understand the issues throughout the process should help clarify issues, avoid time lost to request and review additional documentation, establish a climate for better

feedback, and reduce delays.

Long delays and not knowing the status of an appeal have created financial problems and impacted applicant operations. In one case, an applicant could not close a project because an appeal was still pending. The applicant could not sell property and use the proceeds to help finance a school system. Another applicant had to establish a reserve fund to cover the potential loss of funds if FEMA denied the appeal. Other applicants waiting for appeal decisions said that they might have to borrow funds to pay contractors who provided a service such as debris removal. Permanent work (rebuilding hospitals, schools, sewer lines, etc.) could be delayed indefinitely until a decision is made on an appeal.

Applicants who filed appeals also incurred costs of in-house staff to manage and follow up on the status of appeals. When long delays occurred, the applicants did not recover the extra administrative costs from FEMA. Also, some applicants told us they used consultants to manage their appeals. Long delays, coupled with consulting charges, reduce the benefit of the appeal even if the applicant wins the appeal.

Use of Website

For several years, FEMA entered second-level appeals information into its website. According to FEMA officials, the site provided applicants with a source for reviewing the eligibility criteria used to arrive at appeal decisions. Having access to documents, such as decision letters and case analyses on prior appeal decisions, helped applicants decide whether to proceed with an appeal or to prepare a better documented appeal package. This information also provided guidance to help state and FEMA officials make more accurate and consistent appeal decisions.

FEMA stopped entering new decision information on its second-level appeal decisions to its website in October 2009. Officials told us that a software-related problem resulted in additional appeals information not being posted to the site. At the time of our audit, the problem still needed to be corrected.

FEMA officials are aware that the website does not include current data on second-level appeals. Although the decision-related documents are being saved, the resources have not been allocated to input the data and to ensure that the site reflects complete and current data.

Conclusion

Because the appeals process does not facilitate interaction with FEMA applicants, it is difficult for applicants to follow the status of their appeals. In some cases, applicants have been unable to obtain any status. Furthermore, delays in decisions have resulted in additional costs to the applicants, extended financial uncertainty concerning project funding, and affected applicant operations. The lack of accurate and timely information on the FEMA website prevented applicants and state and FEMA officials from having a valuable information resource concerning second-level appeal decisions.

Recommendations

We recommend that the Associate Administrator, Response and Recovery:

Recommendation #6: Develop and implement procedures that—

- Establish communication channels to allow PA applicants and state officials to interact with FEMA during the appeals process concerning the status of appeals, and
- Authorize applicants' and state officials' access to the tracking system when it is developed.

Recommendation #7: Provide adequate resources to resolve the website software problem and update the site to include all second-level appeal decisions.

Management Comments and Contractor Analysis

FEMA partially concurred with both parts of recommendation #6. FEMA said communication channels already exist between states and the FEMA regions. Although FEMA is committed to continuing to build and strengthen its relationship with states and applicants, FEMA does not agree that it should set up lines of communications directly with applicants. FEMA said this responsibility belongs to the state as the grant administrator. However, our audit showed that applicants were not provided sufficient feedback on the status of their appeals. Instead of communicating directly with the applicant, we believe that FEMA should implement a process whereby FEMA, State and applicant officials meet to discuss appeal issues. This interactive process

should enhance better feedback, help reduce appeal processing delays, and establish an open channel for communications concerning appeals issues.

FEMA said it is considering the development of an appeals tracking system in the electronic tracking system that is used to track Public Assistance Program projects from implementation to closeout. The inclusion of an appeals tracking system in FEMA's Public Assistance tracking system would allow regional offices, the states and applicants the ability to track the progress of first- and second-level appeals.

FEMA concurred with recommendation #7. FEMA acknowledged that the online appeals database experienced delays in posting second-level appeal decision letters and analyses. FEMA said it is working diligently to update FEMA.gov, including the Public Assistance portion of the website. The result will be a user-friendly, easy to navigate site for the State and applicants to access current and past appeal decisions. FEMA will post all past appeal decisions after the FEMA.gov website is updated.

The comments by FEMA are responsive to recommendations #6 and #7. If properly implemented, the actions identified should address the conditions identified during the audit. Within 90 days, the Associate Administrator, Response and Recovery, needs to provide a plan to ensure that the implementation of the proposed actions proceed as intended.

Foxx & Company audited FEMA's Public Assistance appeals process. The overall audit objectives were to determine whether the agency was processing and reporting appeals in a timely manner and how to improve service to the PA applicants. The specific audit objectives were to—

1. Evaluate the causes of applicant appeals,
2. Determine whether FEMA appeal determinations comply with PA regulations and guidelines and are completed in a timely manner,
3. Identify the number of cases where FEMA requested additional documentation and the time it took to receive it,
4. Determine whether the process is efficient,
5. Determine how appeals are tracked in the regions, and
6. Identify what is delaying processing of appeals and what improvements FEMA can make to the current process.

There are first-level and second-level appeals. Foxx & Company selected three FEMA regions that accounted for more than 80% of the second-level appeals processed at FEMA headquarters during FYs 2009 and 2010.³ Because the regions do not maintain summary data on first-level appeal decisions, we used the same regions for our selection of first-level appeals to review. We selected 30 first-level appeal cases (10 from each region) where the Regional Administrator issued a decision. In two regions, we identified two states from each region that processed the majority of appeal cases and selected five appeal cases from each state. In the third region, the majority of the appeal cases were processed by one state; therefore, 10 appeal cases were selected from that state.

We selected 30 second-level appeal cases (10 from each region visited) where FEMA headquarters issued a decision. We also selected 10 second-level appeal cases at FEMA headquarters that were in process during the audit period. Generally, appeal cases with larger disputed dollar amounts, longer processing times, and a mix of denials and approvals were selected. Foxx & Company's methodology included interviews with officials at FEMA headquarters in Washington, DC, and FEMA regional offices in Atlanta, Georgia; Denton, Texas; and Oakland, California. In the FEMA regions under review, we interviewed state officials involved in the PA appeals process in California, Florida,

³ The cutoff for FY 2010 was February 2010. This period represented the most current data available at the time we started our audit.

Louisiana, Mississippi, and Texas. From each of these states, we also interviewed two applicants who had requested appeals after being denied PA funding.

We examined FEMA policies and procedures, federal laws and regulations, and published reports that provided guidance on the PA appeals process. We obtained first-level appeal data from the three FEMA regions and FEMA headquarters second-level appeal data from the PA appeals database and the PA appeals tracker report. The audit field work was completed in August 2010.

We conducted this performance audit pursuant to the *Inspector General Act of 1978*, as amended, and according to *Government Auditing Standards*, July 2007 Revision. The standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained supports the findings and conclusions based on our audit objectives.

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U.S. Department of Homeland Security
500 C Street, SW
Washington, DC 20472



Matt Jadacki
Assistant Inspector General
Office of Emergency Management Oversight
Office of Inspector General
U.S. Department of Homeland Security
Washington, DC 20528

Re: FEMA's Response to OIG Draft Report: *Opportunities to Improve FEMA's Public Assistance Appeals Process* (09-215-EMO-FEMA)

Dear Mr. Jadacki:

The Department of Homeland Security's Federal Emergency Management Agency (FEMA) appreciates the opportunity to review and respond to the Department of Homeland Security (DHS) Office of Inspector General (OIG) report "*Opportunities to Improve FEMA's Public Assistance Appeals Process* (OIG Project No. 09-215-EMO-FEMA)." FEMA is actively resolving the issues identified in the report.

The OIG report analyzes the Public Assistance (PA) Program appeals process. The report focuses on whether the Agency processes and reports appeals in a timely manner. The report also includes recommendations to improve timeliness in processing appeals, tracking and reporting of appeals, and service to PA applicants.

The OIG report indicates that delays in processing appeals impact the applicant, the State, and FEMA operations. The OIG report also contends that, until an appeal is decided, applicants have to obtain other funding sources to complete projects or pay contractors. In addition, the OIG report suggests that delays in the processing of appeals increase State and FEMA administrative costs of monitoring appeals and responding to inquiries concerning the status of appeals.

It is important to keep in mind that the PA Program provides supplemental assistance to eligible applicants for their disaster-related expenses. Further, as part of the PA Program, the State is the grantee for all funds under the PA program and administers the funding to applicants. The State establishes communication procedures for providing feedback to its applicants regarding the status of PA projects as well as the status of appeals.

FEMA's objective is to respond to all appeals within the 90-day regulatory time frame. However, the Agency is also committed to making determinations based on a thorough and fair review of all of the information presented in the appeal while ensuring consistent application of

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FEMA's authority under the Stafford Act and implementing regulations. Appeals often consist of hundreds of pages of documentation and often raise new and challenging policy issues, which require full consideration.

FEMA has worked diligently for several years to significantly improve the PA appeals process by (1) hiring additional staff; (2) procuring appeals support contracts; (3) improving the appeals review and concurrence process; and (4) improving the internal appeals tracking system between the Regions and Headquarters PA Division.

Additionally, FEMA is currently performing a Bottom Up Review (BUR) of the PA program to provide a comprehensive assessment to determine if the program fulfills its statutory mission in the most efficient and effective manner. The BUR will also identify changes needed to streamline the program and improve program delivery to its customers. The PA appeals process is part of the ongoing BUR and FEMA will fully consider any recommended changes to improve and streamline the appeals process.

FEMA provides responses to the OIG's recommendations in the following pages.

Processing Delays

Recommendation #1:

- **Develop and implement procedures that:**
 - **Require states to notify the appropriate FEMA region when an applicant submits an appeal.**

FEMA does not concur with this recommendation. Regulations (44 CFR §206.206(c), *Appeals, Time Limits*) already require a State to forward an applicant's formal written appeal to the appropriate Regional Administrator within 60-days of its receipt of the appeal. The regulations do not provide a basis to require States to notify Regional offices in advance of submitting the appeal itself. However, States and Regions coordinate closely on PA issues including appeals, and will continue to do so.

- **Require regions to follow up with the states on individual appeals that have not been forwarded to the region within the required timeframes.**

FEMA does not concur with this recommendation. As the Grantee, it is the State's responsibility to forward an appeal to a FEMA Regional office within the regulatory timeframe. However, as stated above, FEMA supports and encourages States and Regions to coordinate on all PA issues, including appeals.

- **Provide adequate staffing to expedite the resolution of appeals so that the mandated timeframes are met.**

FEMA concurs with this recommendation. FEMA continues to recruit and hire permanent PA staff at Headquarters and at Regional offices. Additionally, FEMA procured technical assistance contracts in

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2010 that were available to the Regions and Headquarters for support in preparing first and second appeal responses. The contractors are qualified to employ technical and programmatic expertise to ensure that responses are technically sound and consistent with the laws, regulations, and policies that govern the PA Program. This will help ensure that responses are prepared efficiently and completed within regulatory timeframes. It is important to note, however, that all final decisions are made by FEMA and not by contractors.

Recommendation #2:

- **Analyze the headquarters' second-level appeals process and identify opportunities for improved effectiveness, such as establishing backlog reduction goals and standards for key steps in the process.**

FEMA partially concurs with this recommendation. FEMA has reduced the second appeal backlog that accumulated due to an increase in the number of second appeals. In 2009 there was a backlog of 69 second-level appeals. By improving the second-level appeals review and concurrence process (through staffing additions, contracts, and improved tracking systems), the PA Division reduced the appeal backlog to 21 by the end of 2010.

FEMA acknowledges that strong internal coordination is required to meet the regulatory timeframes for appeal responses, and will continue to identify ways to streamline and improve the concurrence process and to establish timeframes for each step of the process. FEMA does not concur with the recommendation to establish separate standards or timeframes for individual steps in the process.

In addition, as stated above, FEMA is currently performing a Bottom Up Review (BUR) of the PA program and will fully consider recommendations to improve program processes, including second-level appeals.

Recommendation #3:

- **Establish realistic, achievable milestones to expedite FEMA-wide plans to develop and implement an integrated agency-wide appeals tracking system that will provide more visibility over the entire appeals process.**

FEMA partially concurs with this recommendation. FEMA is transitioning its current internal tracking software (WebCIMS) to the DHS approved *Intranet Quorum 3* (IQ) tracking software. IQ will manage agency-wide workflow and allow users to create, review or concur with memos or documents. PA Headquarters will transition processing of second-level appeals as the Agency migrates to the new system. As a long-term goal, FEMA is considering the development of an appeals tracking component within the Emergency Management Mission Integrated Environment (EMMIE) database that would provide applicants, states, and regions the capability to track the status of submitted appeals. These represent FEMA's short-term and long-term objectives to improve PA appeals tracking through Agency systems.

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Second-Level Appeals Tracking and Reporting

Recommendation #4:

- **Establish time standards for the regional work performed on second-level appeals and include this time in the 90-day period that FEMA headquarters has to issue a final decision on a second-level appeal.**

FEMA partially concurs with this recommendation. FEMA interprets 44 CFR §206.206(c)(3), consistent with Section 423 of the Stafford Act, to mean that when the Assistant Administrator receives the second-level appeal he/she has 90 days in which to render a decision regarding that appeal. Second-level appeals often identify new issues that were not raised in the first appeal, and may include documentation to support those new arguments. The Regions provide the initial review of second-level appeals and supporting documentation and provide a recommendation in the Regional Administrator's Memorandum to the Assistant Administrator. FEMA does not plan to revise timeframes in the appeals process beyond what is currently expressed in the Stafford Act and appeals regulation. However, FEMA will continue to actively identify ways to streamline the appeals review process, including reducing the time that Regions review and transmit second appeals to headquarters. For example, FEMA is working to establish an electronic file sharing system that will allow Regions to transmit appeal documents electronically.

Recommendation #5:

- **Establish procedures and appropriate controls to ensure that the second-level appeals data tracking system is reporting accurate data.**

FEMA concurs with this recommendation. FEMA established a new internal appeals tracking system in January 2010. The tracking system requires Headquarters PA Division and all Regions to submit monthly reports that include a list of first and second appeals, the issue and amount disputed, status of appeal reviews, and final decisions. This tracking system helps ensure accurate reporting on second appeals.

Opportunities to Better Serve PA Applicants

Recommendation #6:

Develop and implement procedures that:

- **Establish communication channels to allow PA applicants and state officials to interact with FEMA during the appeals process concerning the status of appeals.**

FEMA partially concurs with this recommendation. FEMA continues its commitment to build and strengthen its relationship with States and applicants, and understands the importance of good communication among all stakeholders. Communication channels already exist between States and Regions. However, FEMA does not agree that it should set up lines of communications directly with

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applicants. The State is the grant administrator for all funds under the PA program and provides technical advice and support to applicants. The State PA Representative is the applicant's designated point of contact to obtain FEMA assistance, and the State establishes its own protocol for providing feedback to applicants on the status of appeals.

- **Authorize applicants' and state officials' access to the tracking system when it is developed.**

FEMA partially concurs with this recommendation. Authorized FEMA and State PA Representatives can access EMMIE. EMMIE is FEMA's electronic tracking system used to track the progress of PA Project Worksheet (PW) from project implementation to closeout. FEMA is considering the development of an appeals tracking system in EMMIE to allow Regional Offices, the State and applicants the ability to track the progress of first- and second-level appeals. However, FEMA does not plan to provide access to the Agency's internal tracking systems, as they contain pre-decisional information. FEMA remains committed to responding to appeals within the specified timeframes to the greatest extent possible. FEMA Regions maintain close coordination and communication with States on PA issues, including appeals, and will continue to do so.

Recommendation #7:

- **Provide adequate resources to resolve the website software problem and update the site to include all second-level appeal decisions.**

FEMA concurs with this recommendation. FEMA acknowledges that the online appeals database experienced delays in posting second-level appeal decision letters and analyses. FEMA is working diligently to update FEMA.gov, including the PA portion of the website. The result will be a user-friendly, easy to navigate site for the State and applicants to access current and past appeal decisions. FEMA will post all past appeal decisions after the FEMA.gov website is updated.

Once again, thank you for the opportunity to comment on the draft report. The Department of Homeland Security and the Federal Emergency Management Agency look forward to working with you on future homeland security and emergency management engagements.



David Kaufman
Director
Office of Policy and Program Analysis

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