

Department of Homeland Security **Office of Inspector General**

FEMA's Efforts To Collect a \$23.1 Million Debt from the State of Louisiana Should Have Been More Aggressive



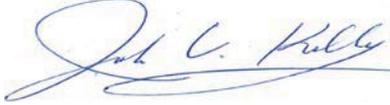


OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

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

September 8, 2014

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



FROM: John V. Kelly
Assistant Inspector General
Office of Emergency Management Oversight

SUBJECT: *FEMA's Efforts To Collect a \$23.1 Million Debt from the State of Louisiana Should Have Been More Aggressive*
Audit Report Number OIG-14-134-D

Attached for your information is our final letter report, *FEMA's Efforts To Collect a \$23.1 Million Debt from the State of Louisiana Should Have Been More Aggressive*. We audited the Federal Emergency Management Agency's (FEMA) efforts to collect a \$23.1 million Bill for Collection due from the State of Louisiana (State). We discussed the results of this audit with FEMA officials and provided a draft report to them on October 28, 2013. The report contains two recommendations.

Within 90 days of the date of this memorandum, please provide our office with a written response addressing our concerns with your response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for the recommendations. Also, please include the contact information of responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendations. Until we receive and evaluate your response, we will consider the recommendations open and unresolved.

Consistent with our responsibility under the *Inspector General Act*, we will provide 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.



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Major contributors to this report are Christopher Dodd, Acting Director; Paige Hamrick, Audit Manager; and David B. Fox, Auditor-in-Charge.

Please call me with any questions at (202) 254-4100, or your staff may contact Tonda L. Hadley, Deputy Assistant Inspector General for Audit Services, Office of Emergency Management Oversight, at (214) 436-5200.

Attachment



Background

During 2004, the Louisiana Legislative Auditor and our office issued audit reports on the State's management of the Hazard Mitigation, Unmet Needs, and Flood Mitigation Assistance grant programs. The scope of our 2004 audit included funding for the Hazard Mitigation Grant Program and Unmet Needs programs totaling \$40,524,912 in direct project costs and administrative and management costs from eight disasters declared between September 1998 and October 2002.¹ We recommended that, among other actions, FEMA identify and deobligate any ineligible, unsupported, or duplicate funding. In March 2005, as a result of our recommendations, FEMA Region VI started the process of recouping \$30.4 million from the State.² By May 2007, the State had provided FEMA Region VI with sufficient documentation to reduce the original debt from \$30.4 million to \$26.6 million. In July 2010, the Regional Administrator, after applying cost overruns, reduced the debt to \$23.1 million and referred it to the FEMA Finance Center in September 2010 for issuance of the Bill for Collection. In January 2012, the FEMA Finance Center transferred the debt to Treasury. As of May 2014, Treasury still held the uncollected debt.

Results of Audit

FEMA's efforts to collect the \$23.1 million debt from the State were not adequate because FEMA did not aggressively collect this debt. Federal regulations and FEMA guidelines require FEMA to aggressively collect its debts, yet more than 8 years after initiating recoupment efforts, FEMA has not collected this money. As of May 2014, the State owed the U.S. Government \$23.1 million plus \$6.2 million in interest, penalties, and administrative fees, or \$29.3 million total.³

FEMA's outdated debt collection policies and procedures caused delays and uncertainties. Both FEMA Region VI and FEMA Headquarters officials were uncertain as to who should be responsible for recouping the debt and how to legally recover it. In

¹ Louisiana Legislative Auditor's report, *Louisiana Office of Homeland Security and Emergency Preparedness, New Orleans, Louisiana*, issued March 3, 2004, and OIG report DD-02-05 *Grant Management: Louisiana's Compliance With Disaster Assistance Program's Requirement*, issued November 30, 2004. These two audits concluded that the State had not administered several grants according to Federal regulations; failed to monitor subgrantee expenditures related to the Flood Mitigation Assistance program and the Hazard Mitigation Grant Program; and had not properly accounted for FEMA program funds.

² Recoupment is a special method that agencies use to adjust debts arising under the same transaction or occurrence (31 CFR 900.2(d)).

³ In addition to \$5.9 million in interest, penalties, and administrative fees FEMA Finance Center charged, it also added a 1 percent administrative fee of \$290,310 to the outstanding balance as of May 31, 2014, in anticipation of Treasury's collection fee to FEMA.



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addition, FEMA Finance Center officials did not promptly transfer the debt to Treasury for collection despite Federal statutes and regulations that require debts delinquent for more than 180 days to be transferred to Treasury for collection. FEMA officials had the tools to aggressively collect this debt; however, it remains uncollected after more than 8 years (see Exhibit A, Debt Collection Tools Available to FEMA).

Outdated Debt Collection Policies and Procedures Caused Delays and Uncertainties

FEMA Region VI and FEMA Headquarters officials delayed collection efforts because FEMA's debt collection policies and procedures were outdated, which caused uncertainties as to who should recoup the debt and how FEMA could legally recover the money. As a result, Region VI took 5½ years to transfer the debt to the FEMA Finance Center for issuance of the \$23.1 million Bill for Collection, plus interest, penalties, and administrative fees. A Bill for Collection is a formal notice to a debtor indicating the amount due, description of the charges, a payment due date, and remedies available upon default.

Outdated Debt Collection Policies and Procedures

Until April 2013, FEMA's most current debt collection authority was FEMA Manual 2610.1, *Debt Collection*, issued more than 24 years ago on November 30, 1988. FEMA designed the manual to provide guidance to FEMA employees involved in the recording, collecting, and reporting of debts. It also included procedures for FEMA to assess interest and penalties, offset debts against other funding sources, request hearings, establish repayment plans, and refer appeals to the Deputy Agency Collection Officer. Because of the age of FEMA's 1988 Debt Collection Manual, much of the law in effect at that time was obsolete (reserved, repealed, or otherwise rescinded) at the time FEMA began collecting this debt. As a result, FEMA no longer followed the manual and, instead, used the *Debt Collection Improvement Act of 1996* and Federal Claims Collection Standards for guidance.

According to 31 Code of Federal Regulations (CFR) 901.1(a) and Office of Management and Budget (OMB) Circular A-129, Federal agencies must aggressively collect their debts, have a fair but aggressive program to recover delinquent debts, and establish collection strategies consistent with their statutory authority. On March 7, 2013, we renewed discussions with FEMA's Office of Chief Financial Officer about the age of its 1988 Debt Collection Manual. Shortly thereafter on April 15, 2013, FEMA issued a new directive entitled *Submission of Debt to the FEMA Finance Center: State, Local, Tribal, and Territorial Debts*, Directive Number FD 116-1.⁴

⁴ Per FEMA officials, this directive was FEMA's first step in developing and revising the outdated 1988 Debt Collection Manual.



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Although this directive is a positive step toward collecting its debts, FEMA needs to develop further guidance addressing timeframes and additional procedures on how to specifically use “internal offsets.” Internal offsets are collections of debts against outstanding requests for reimbursements or advance payments otherwise due the debtor from the creditor agency.

Uncertainties as to Who Should be Responsible

FEMA’s uncertainty as to who was responsible for recouping the debt contributed to the 8-year outstanding debt. The *Debt Collection Improvement Act of 1996* requires that all agencies try to collect a claim of the United States Government for money or property arising out of their activities. In addition, the Federal Claims Collection Standards require Federal agencies to “aggressively collect” all debts arising out of activities of that agency and to undertake collection activities “promptly with follow-up action as necessary.”

Below is a chronology of significant events following FEMA Region VI’s February 2004 initial request to the State, to submit documentation pertaining to the grants that the Louisiana Legislative Auditor and our office audited:

1. May 2004 – State submitted a portion of its documentation to FEMA.
2. March 2005 – After reviewing the State’s documentation, Region VI officials initiated efforts to recover the State’s inappropriately managed mitigation funds. Region VI allowed the State 90 days to submit additional documentation and informed the State that the Financial & Acquisition Management Division, Disaster Finance Branch would issue a Bill for Collection upon final resolution.
3. July 2005 – In response to Region VI’s request, the State provided some of its documentation. However, it was not until May 2007—more than 22 months later—that the State provided Region VI with its final summary of information.
4. March 2007 – Region VI officials referred the recoupment effort to FEMA Headquarters believing Headquarters was best able to resolve the debt. However, FEMA Headquarters referred the recoupment effort back to Region VI about a year later (April 2008) recommending that Region VI recoup the funds.



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5. July 2009 – FEMA Headquarters officials informed Region VI that they had discussed who would need to be involved in the recoupment effort and that the Headquarters Grants Program Division should take the lead.
6. July 2010 – The FEMA Region VI Administrator, adjusting for cost overruns, reduced the total collection amount to \$23.1 million.
7. August 2010 – FEMA Headquarters determined Region VI was responsible for the recoupment effort.
8. September 2010 – Because of uncertainties at Region VI as to which division within Region VI would be responsible for the recoupment effort, the Region VI Administrator asked his Mission Support staff to close out the recoupment effort. Mission Support staff then transferred the debt to the FEMA Finance Center to issue the Bill for Collection.
9. November 2010 – The FEMA Finance Center issued the State a demand for payment (with attached Bill for Collection) in the amount of \$23.1 million. The letter demanded payment-in-full and provided the State formal notice of FEMA's ability to take collection actions that included administrative offset and submitting the debt to Treasury for collection if the State failed to pay within 30 days. The demand for payment also provided the State 60 days to appeal the collection action. The State did not respond.

Region VI should have taken aggressive actions to collect the debt as soon as the State owed the debt in March 2005. Failing that, Region VI should have transferred the debt to the FEMA Finance Center for issuance of the Bill for Collection, which triggers the accrual of interest, penalties, and administrative fees.

Region VI officials attributed the delay in collecting the State's documentation to several factors including Hurricanes Katrina and Rita in 2005, changes in leadership (at both Region VI and the State), and FEMA's reluctance to take money back from a State hit hard by recent hurricanes.⁵ In addition, both FEMA Region VI and Headquarters officials said they delayed collection because (1) this was the first collection of its type; (2) they were uncertain about how to collect a debt of this complexity; and (3) there was no guidance, written or otherwise, available on how to collect this type of debt.

⁵ According to FEMA officials, flooding destroyed many of the documents the State needed to substantiate its costs and many parish buildings also flooded, which prevented the State from obtaining documents from some of the parishes.



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Uncertainties as to How to Legally Recover the Money

During 2009 and 2010, FEMA contacted the State on multiple occasions to discuss various proposals to offset the State's debt. FEMA officials did not accept any of the State's proposals either because the proposal was not legal, did not involve the use of the State's own funds, or potentially punished innocent applicants by reducing their State funding. For example, to offset the debt, FEMA could have deobligated grant funds earmarked to repair previous disaster damages or mitigate future damages. However, doing so would take funds away from innocent disaster victims when it was the State that mismanaged FEMA's Hazard Mitigation Grant Program, Unmet Needs, and Flood Mitigation Assistance program funds.⁶ Therefore, we believe FEMA should offset this debt against Federal funds the State received to manage federally-declared disasters. This would ensure the State used its own funds to repay its debts, instead of Public Assistance and Hazard Mitigation grant funds FEMA obligated to assist disaster victims.

Federal law and FEMA regulations at 31 United States Code (USC) § 3716(a) and 44 CFR 13.52, respectively, allow FEMA the right to reduce its debt by making administrative offsets against other requests for reimbursements and withholding advance payments if a debt is not paid within a reasonable time. In addition, FEMA's 1988 Debt Collection Manual specifically states that FEMA may offset debts against "any funds to which the debtor is entitled" when the debtor defaults or otherwise fails to respond to the initial Bill for Collection letter.⁷

Although Treasury has granted FEMA's request to prohibit Treasury's Financial Management Service from offsetting against portions of FEMA's disaster relief and emergency assistance programs, this prohibition does not apply to FEMA's ability to "internally offset" those funds. FEMA should offset this debt internally including evaluating the availability of Louisiana's requests for State Management Administrative Costs (FEMA Category Z costs). FEMA should take this action promptly pursuant to 31 CFR 901.1(a).

⁶ In response to the OIG and Region review, the Region determined that the State did not provide sufficient evidence to establish the legitimate use of project funds under the Hazard Mitigation Grant Program, Unmet Needs program, and Flood Mitigation Assistance program.

⁷ FEMA's April 15, 2013, directive (FEMA Directive Number FD 116-1, *Submission of Debt to the FEMA Finance Center: State, Local, Tribal, and Territorial Debts*) does not specifically address internal offset other than by flowcharts found at appendixes 3 and 4 that indicate the Program Office Representative may use internal offset as part of its informal debt resolution process. Instead, the directive's narrative states that, once a debt is validated, it is transferred to the FEMA Finance Center where it will use additional debt collection measures, consistent with all authorities including the *Debt Collection Improvement Act of 1996* and submission of the debt to Treasury, until the debt is completely satisfied. FEMA's newest directive does not supersede any prior debt collection manuals.



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Louisiana has spent more than \$200 million in FEMA State management costs to administer its Public Assistance grant programs for Hurricanes Katrina and Rita.⁸ The State also projected that it will need an additional \$195 million in State management costs through 2020 to manage Public Assistance grant programs for these two disasters. Therefore, FEMA could offset the \$23.1 million debt plus interest, penalties, and administrative fees against the State's requests for Katrina/Rita State management costs.

FEMA Finance Center Did Not Promptly Transfer Debt to Treasury

Federal law requires agencies to transfer their nontax debts delinquent more than 180 days to Treasury for debt collection.⁹ However, the FEMA Finance Center did not transfer the \$23.1 million debt until January 4, 2012, more than 1 year after the debt became delinquent.¹⁰ When we asked FEMA whether the debt fell within any of the law's exceptions to transferring the delinquent debt to Treasury enumerated in 31 U.S.C. § 3711(g)(2)(A)(i) through (v), FEMA Finance Center officials said that it did not. In fact, it was not until recently that the FEMA Finance Center even began referring State debts to Treasury. As of October 2011, the Office of Chief Financial Officer authorized the FEMA Finance Center to begin issuing collection letters, but only for those debts delinquent for more than 1 year. FEMA Finance Center officials acknowledge that this practice violated Federal law, but emphasized that FEMA's new debt collection directive now requires the FEMA Finance Center to forward delinquent debts to Treasury within 180 days of becoming delinquent.

Conclusion

FEMA's efforts to collect the \$23.1 million debt from the State were not adequate because FEMA did not aggressively pursue collection as Federal regulations and FEMA guidelines require. As a result, the State currently owes the U.S. Government \$23.1 million, plus \$6.2 million of accrued interest, penalties, and administrative fees, or \$29.3 million. FEMA should have acted quickly to collect these funds, but delayed aggressive action because of uncertainties regarding how to proceed. FEMA has always had the legal authority to offset this debt against FEMA funds due to the State. Therefore, FEMA

⁸ *State of Louisiana Needs a Strategy To Manage Hurricanes Katrina and Rita Public Assistance Grants More Effectively*, DHS OIG Report Number DD-13-15, issued September 26, 2013.

⁹ 31 U.S.C. § 3711(g), 31 CFR 901.1(e), 31 CFR 901.3(b), 31 CFR 285.12(c), United States General Accounting Office, Office of the General Counsel, *Principles of Federal Appropriations Law, Third Edition, Volume III, September 2008*.

¹⁰ A debt becomes "delinquent" if it has not been paid by the date specified in the agency's initial written demand for payment. In this particular instance, because the State failed to respond within 30 days, the debt became delinquent on the date FEMA mailed the demand for payment, November 15, 2010.



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should take immediate action to administratively offset these funds against the amounts owed to the State and notify Treasury as it collects the debt.

Recommendations

We recommend that the FEMA Office of Chief Financial Officer:

Recommendation #1: Take immediate action to administratively offset the \$23,131,010 debt plus \$6,190,310 in accrued interest, penalties, and administrative fees, totaling \$29,321,320.

Recommendation #2: Develop improved collection policies and procedures to provide FEMA employees with specific guidance on how to collect debts.

Discussion With Management and Audit Followup

We discussed our findings and recommendations with FEMA officials and included their comments in this report as appropriate. We also provided a draft report in advance to these officials and discussed it at an exit conference on October 28, 2013. At the exit conference, FEMA officials withheld comment on our findings and recommendations.

However, on January 13, 2014, and again on July 28, 2014, FEMA provided us written responses, which appear in their entirety as exhibits B and C, respectively. In the following paragraphs we summarize and analyze FEMA's comments on each of our recommendations as well as provide additional insight into the validity and nature of this particular debt.

Validity and Nature of the Debt

There is no dispute regarding the validity of this debt because FEMA identified the debt as a result of the OIG's audit and investigation that began in 2004. We reported that certain Louisiana parishes used Hazard Mitigation Grant Program and Unmet Needs funds to mitigate projects that FEMA had not properly approved. The U.S. Attorney and OIG Office of Investigations conducted criminal investigations into the misuse of these FEMA funds that resulted in three Louisiana State Officials being prosecuted and convicted and, in one case, incarcerated, for making false statements to a Federal investigator and committing perjury.

Therefore, given the (1) indisputable amount of the debt, (2) the criminal actions that led to this debt, and (3) OMB's and Treasury's assurances that FEMA retains the right to



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internally offset this debt even after turning it over to Treasury for collection, FEMA's responses to this report are unacceptable. FEMA is the only Federal agency in a position to collect the debt. FEMA acknowledges that it now retains the right to internally offset this debt, but is deferring any action until after it receives guidance and training from Treasury. FEMA's reluctance to collect this debt immediately violates its fiduciary responsibility over the Disaster Relief Fund.

Recommendation #1: Take immediate action to administratively offset the \$23,131,010 debt plus \$6,190,310 in accrued interest, penalties, and administrative fees, totaling \$29,321,320.

In their initial response, FEMA officials disagreed with Recommendation #1 and said they had transferred the debt to Treasury for servicing in accordance with the *Debt Collection Improvement Act*. FEMA officials also said that, after they transferred the debt to Treasury, Treasury was responsible for taking appropriate debt collection actions. In their subsequent response, FEMA officials reiterated parts of their initial response but explained that, when they transferred the debt to Treasury for servicing, they believed they had acted in accordance with the *Debt Collection Improvement Act* and OMB A-129 guidance. FEMA officials further stated that based on the new clarification from Treasury and OMB on using passive collection, FEMA now agrees that "passive collection" is a "new potential tool for further debt collection actions after referral to Treasury."

We agree in part and disagree in part. Federal regulations make a distinction between active collection and other actions that FEMA is not precluded from taking. Specifically, pursuant to 31 CFR 903.3(b)(3), although an agency's termination of collection activity ceases *active* collection, it does not preclude that same agency from taking other actions. These actions include "Offsetting against future income or assets not available at the time of termination of collection activity." In addition, according to 31 CFR 285.5(a)(3), the receipt of Treasury's collections via centralized offset "does not preclude a Federal agency [FEMA] from pursuing other debt collection remedies *in conjunction with* centralized offset [emphasis added]." However, Federal regulations 31 CFR 903.3 and 31 CFR 285.5 are not new regulations, each having been promulgated in November 2000 and December 2002, respectively. Therefore, FEMA's assertion that passive collection is a "new standard based on Treasury's clarification and thus is prospective rather than retrospective" is clearly erroneous. FEMA has always had the legal authority to offset this debt against FEMA funds due to the State.

Next, FEMA officials acknowledged that they retain the right to internally offset this debt but will defer action on any internal offsets until they receive additional guidance and training from Treasury to avoid overlapping and conflicting debt collection actions.



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We disagree. When FEMA referred the debt to Treasury for collection, the debt remained a debt owed to FEMA, and FEMA is still responsible for maintaining all official records, including accounting records, pertaining to the debt.¹¹ FEMA must report any payments it received to Treasury.¹² Conversely, Treasury must notify FEMA of any offsets it made to collect the debt.¹³ Therefore, FEMA's concern that there would be overlapping and conflicting debt collection actions is without merit. Moreover, although FEMA officials stated they agree with Recommendation #1, their planned course of action indicates otherwise. We recommended *immediate* action. However, by deferring collection action until after Treasury provides further guidance, FEMA has effectively postponed internally offsetting this debt indefinitely.

Despite FEMA having been apprised of Treasury's and OMB's responses to its concerns, having acknowledged its right to internally offset this debt, and a Federal regulation and Treasury policy that require each party to notify the other of any collection, FEMA remains unwilling to immediately internally offset this debt. Therefore, we consider the recommendation to be open and unresolved, and FEMA should immediately internally offset this \$23.1 million 8-year-old debt.

Recommendation #2: Develop improved collection policies and procedures to provide FEMA employees with specific guidance on how to collect debts.

FEMA officials concurred with Recommendation #2 and said that they recognize the OIG's concerns with FEMA's newest directive, *Submission of Debt to the FEMA Finance Center: State, Local, Tribal and Territorial Debts*, issued April 15, 2013. They said that FEMA will address our concerns by updating the directive and finalizing it in fiscal year 2015. More specifically, the revised directive will prescribe specific timeframes within which Program Office Representatives should act in identifying a potential debt. In addition, FEMA stated that it will address its ability to use passive collection methods to offset debts to the extent that Treasury provides further guidance on passive collection.

We do not consider FEMA's planned actions sufficient to address our recommendation. FEMA's current directive does not specifically address FEMA's ability to internally offset debts (other than by flowcharts found at appendixes 3 and 4 of the directive). It also does not provide guidance on how to specifically use offsets; nor will it until Treasury provides additional guidance on passive collection. Merely updating its directive is not sufficient because FEMA has effectively deferred addressing internal offset indefinitely

¹¹ Chapter 3: Financial Management and Accounting, Section 3.13 Non-Tax Debt Collection, Referral and Write-Off, U.S. Department of Homeland Security, October 16, 2009, page 5.

¹² Managing Federal Receivables, *A Guide for Managing Loans and Administrative Debt*, Department of the Treasury, Financial Management Service, May 2005, Chapter 6, page 30.

¹³ 31 CFR 285.5(h)(1).



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by requiring Treasury, which is under no obligation to act, to first provide them with guidance on passive collection.

Finally, FEMA's current directive states the FEMA Finance Center will use all debt collection authorities as appropriate. However, neither the current directive nor the revised directive (as described) specifically address the requirement that FEMA "aggressively" collect its debts other than to refer the debt to Treasury within 180 days of a debt being delinquent. Simply stating that the revised directive will be in accordance with the Federal Claims Collection Standards is not sufficient to meet this requirement.

Therefore, we consider the recommendation to be open and unresolved until FEMA develops and improves its debt collection policies and procedures to include specific guidance on how to aggressively collect its debts.



Exhibit A

Debt Collection Tools Available to FEMA

Federal law (see footnote 9) requires agencies to transfer their nontax debts delinquent more than 180 days to Treasury for debt collection. However, this law also encourages agencies to transfer debts that are less than 180 days delinquent to Treasury to accomplish “efficient, cost effective debt collection.” The following debt collection tools are available to Federal agencies, including FEMA, before the debt becomes 180 days delinquent: (1) demand for payment, (2) centralized administrative offset, and (3) non-centralized administrative offset.

Demand for Payment

A demand for payment formally notifies the debtor of the nature and amount of the debt. It includes: the basis for the debt; an explanation of how interest, penalties, and administrative costs are added to the debt; the date by which the debtor should make payments to avoid late charges and enforced collection, i.e., file suit to recover debt; contact information; and an explanation of the agency’s intent to enforce collection if the debtor fails to pay.

Centralized Administrative Offset

The Treasury’s Financial Management Service administers a centralized administrative offset program to collect delinquent debts owed to Federal agencies. To collect delinquent debts, agencies may refer them directly to Treasury’s Financial Management Service to offset against other Federal payments due to the debtor.¹⁴ The Treasury’s Financial Management Service can use the Treasury Offset Program for Federal payments that include, but are not limited to, Federal wage, salary, and retirement payments; vendor and expense reimbursement payments; certain benefit payments, travel advances, and reimbursements; and grants, fees, refunds, judgments, tax refunds, and other payments Federal agencies make.

¹⁴ A debt is eligible for referral if the debt is delinquent, legally enforceable, more than \$25, and not secured by collateral subject to a pending foreclosure action (31 CFR 285.5(d)(3)).



Exhibit A (continued)

Note, however, that Federal law exempts certain types of payments, making them ineligible for centralized offset by the Treasury's Financial Management Service. In addition, the Secretary of the Treasury has granted requests from various payment agencies, including FEMA, to exempt specific types of payments under 31 U.S.C. § 3716(c)(3)(B).¹⁵

Non-Centralized Administrative Offset

If an agency cannot centrally offset a past due, legally enforceable, nontax delinquent debt, it can collect the debt through non-centralized administrative offsets. These offsets include Treasury "Cross-Servicing" and other collection centers and an agency "Internal Offset."

Cross-Servicing occurs when Federal agencies transfer delinquent debts to Treasury for collection Government-wide. Treasury takes appropriate actions to collect transferred debts including sending demand letters, making telephone calls, referring debtors to the Treasury Offset Program, and, when warranted, referring accounts to the Department of Justice for litigation. An agency can transfer debts to Treasury at any time after fulfilling due process requirements.

If an agency that is owed a debt is also making payments to the debtor, as with FEMA and the State of Louisiana, the agency may use internal offset to the extent that agency's statutes, regulations, and the common law permit. When a debtor does not pay a debt within a reasonable time after demand, Federal regulations grant FEMA the right to (1) reduce its debt with administrative offsets against other requests for reimbursements, (2) withhold advance payments otherwise due, or (3) take any other action the law permits.

¹⁵ See *Payments Exempt from Offset by Disbursing Officials (Non-tax Debt Collection)* at <http://www.fms.treas.gov/debt/dmexmpt.pdf> for a complete list of payments exempted by Federal law and the Secretary of the Treasury.



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Exhibit B

FEMA's Initial Response

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



MEMORANDUM FOR: John Kelly
Assistant Inspector General Emergency Management Oversight
Office of Inspector General

FROM: 
Edward Johnson
Chief Financial Officer
Office of the Chief Financial Officer

SUBJECT: FEMA Response to Draft Report: "FEMA's Efforts to Collect a \$23.1
Million Debt from the State of Louisiana Should Have Been More
Aggressive" Audit Report Number DD-XX-14

Thank you for the opportunity to comment on OIG Draft Report "FEMA's Efforts to Collect a \$23.1 Million Debt from the State of Louisiana Should Have Been More Aggressive" Audit Report Number DD-XX-14. The findings in the report will be used to strengthen the effectiveness and efficiency of how we execute and measure our program. We recognize the need to continue to improve our processes, including addressing the recommendations raised in this report. The following are our response to the recommendation for implementation,

Recommendation #1: Take immediate action to administratively offset the \$23,131,010 debt plus \$4,700,932 in accrued interest, penalties, and administrative fees, totaling \$27,831,942. To accomplish this, FEMA should consider offsetting these amounts against those due to the State of Louisiana for state management costs.

Response: Non-Concur. FEMA has taken action in accordance with the Debt Collection Improvement Act; which requires that all debts owed to agencies that are more than 180 days delinquent be transferred to Treasury for servicing. Once Treasury has received a debt for servicing, Treasury is responsible for taking the appropriate debt collection actions, therefore, collection action by FEMA ceases according to OMB A-129 and Treasury guidance.

Specifically, OMB A-129 states "Once debts are transferred to Treasury, agencies must cease all collection activities other than maintaining accounts for the Treasury Offset Program (http://www.whitehouse.gov/sites/default/files/omb/assets/a129/rev_2013/pdf/a-129.pdf) V(C)(3)(b) Page 19). In addition, Treasury's "Managing Federal Receivables" states "Once a debt is referred to FMS, the agency must stop its own collection activity related to the referred debt (<http://www.fms.treas.gov/debt/MFR/ManagingFederalReceivables.pdf>) Chapter 6, page 6-30). Any payments received by an agency for a debt that has been referred to FMS must be reported to FMS as a payment (not as an adjustment to the debt balance) to allow FMS to properly assess its fees."

Therefore, FEMA properly referred the outstanding, unpaid debt to the Treasury consistent with the above standards, and as a result, no further action by FEMA at this time is appropriate or required. As a result, FEMA believes this recommendation should be closed.

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Exhibit B (continued)

Recommendation #2: Develop improved collection policies and procedures to provide FEMA employees with specific guidance on how to collect debts.

Response: Concur. As mentioned in the Draft report, the "Submission of Debt to the FEMA Finance Center: State, Local, Tribal and Territorial Debts" Directive FD 116-1 (the Directive) was issued on April 15, 2013. The Directive provides the improved collection policies and procedures recommended. Specifically, the directive clearly articulates roles and responsibilities for various phases of debt collection and builds a foundational level of accountability for FEMA Program Offices (POs) and the Office of the Chief Financial Officer in the debt collection process.

The Directive places responsibility for monitoring and addressing all audit findings or reports on the applicable PO to timely identify and take actions on debt-related findings. The PO is required to track and ensure timeliness of actions; send written notification informing the debtor of an identified amount owed/potential debt and the timeframe to appeal; evaluate and determine decision on appeal; and provide FEMA Finance Center (FFC) with final determination amount owed and all supporting documentation. FEMA Program Offices currently comply with programmatic timelines prescribed by applicable Code of Federal Regulations.

In addition, the Directive makes the OCFO responsible for collecting a debt once a final amount due has been determined as owed and valid, and provided to the FFC for billing and collection. Timelines for debt collection actions are conducted in accordance with established federal debt collection standards. The Directive requires FFC to send written notification informing the debtor of the financial obligation and FEMA's intent to collect; charge interest and penalties on delinquent debts; and refer delinquent debts to Treasury within 180 days for collection action.

The OCFO complies with the delinquent debt referral requirements and timeframes prescribed by the federal debt collection standards. The OCFO plans to continue to work with FEMA programs and offices to identify additional requirements and updates to this Directive, as appropriate, based on debt management requirements and lessons learned to ensure timely and complete actions. As a result of the above explanation, FEMA's believes its current debt policy and procedures are appropriate and consistent with legal and regulatory standards and requirements and request this recommendation to be closed.

Again, we thank you for the work that you and your team did to inform us of measures we can take to enhance the program's overall effectiveness. We look forward to OIG's final report for "*FEMA's Efforts to Collect a \$23.1 Million Debt from the State of Louisiana Should Have Been More Aggressive*". Please direct any questions regarding this response to Gary McKeon, FEMA's Chief Audit Liaison, at 202-646-1308.



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Exhibit C
FEMA's Subsequent Response

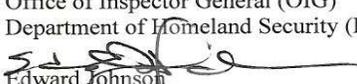
U.S. Department of Homeland Security
Washington, DC 20472



FEMA

July 28, 2014

MEMORANDUM FOR: John V. Kelly
Assistant Inspector General
Emergency Management Oversight (EMO)
Office of Inspector General (OIG)
Department of Homeland Security (DHS)

FROM: 
Edward Johnson
Chief Financial Officer (CFO)
Office of the Chief Financial Officer (OCFO)

SUBJECT: FEMA's Revised Response to Draft Report: "FEMA's Efforts to Collect a \$23.1 Million Debt from the State of Louisiana Should Have Been More Aggressive"
Audit Report Number OIG-14-XX-D

Dear John:

Thank you for the opportunity to provide an update to the comments the Federal Emergency Management Agency (FEMA) made to the draft report reviewed and discussed previously with the OIG. We appreciate OIG's deletion of the reference to administrative costs as a possible offset for this debt in Recommendation #1. FEMA also appreciates the OIG's follow-up and engagement with the Department of the Treasury (Treasury) and Office of Management and Budget (OMB) to clarify new authorities under the Debt Collection Improvement Act.

As stated in our previous response, FEMA believes it previously acted in full accordance with the Debt Collection Improvement Act, which requires that all debts owed to agencies that are more than 180 days delinquent be referred to Treasury for collection. In addition, FEMA believes it acted in accordance with OMB A-129, which holds that "once debts are transferred to Treasury, agencies must cease all collection activities other than maintaining accounts for the Treasury Offset Program." As stated above, we understand that OIG conducted a follow-up meeting with OMB and Treasury to discuss concerns about whether "passive collection" as recommended by the OIG was fully in compliance with the Debt Collection Improvement Act. OIG then communicated to FEMA that both OMB and Treasury opined that "passive collection" even after referral to Treasury was an acceptable debt collection practice for the referring agency.

Based on that clarification and these new debt collection standards, FEMA now agrees that it retains the right to internally offset debt even after turning it over to Treasury through "passive collection". FEMA has discussed "passive collection" with Treasury and we are awaiting Treasury to issue additional guidance and training to ensure our full compliance with these new

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Exhibit C (continued)

standards for “passive collection” while the debt is at Treasury to avoid overlapping and conflicting debt collection actions. Moreover, we believe that OIG’s report should clearly indicate that the concept of “passive collection” is a new standard based on Treasury’s clarification and thus is prospective rather than retrospective in this matter. In the interim, FEMA will reengage the State of Louisiana on what actions the State plans to take to address this debt. As we discussed in our last meeting with the OIG, FEMA already has in place certain offset exceptions related to Disaster funding, which we plan to update based on current terminology and mission requirements.

In consideration of the above discussion, the following is our written response to the two (2) recommendations for implementation; of which, FEMA concurs with both recommendations with the changes identified and clarifications provided.

Recommendation #1: Take immediate action to administratively offset the \$23,131,010 debt plus \$4,700,932 in accrued interest, penalties, and administrative fees, totaling \$27,831,942. To accomplish this, FEMA should consider offsetting these amounts against those due to the State of Louisiana for state management costs.

Proposed Rewrite of Recommendation #1: *Take immediate action to administratively offset the \$23,131,010 debt plus \$4,700,932 in accrued interest, penalties, and administrative fees, totaling \$27,831,942.*

Response: Concur. FEMA concurs with recommendation #1 with deletion of the 2nd sentence. FEMA believes it acted in accordance with the Debt Collection Improvement Act when the \$23.1 Million debt was transferred to the Treasury and then acted in accordance to the Office and Management and Budget (OMB) A-129 guidance, when no additional debt collection actions were pursued after referral to Treasury. However, based on the new clarification from Treasury and OMB on using “passive collection” for debts, FEMA agrees that “passive collection” is a new potential tool for further FEMA debt collection actions after Treasury referral.

FEMA believes strongly in holding all financial recipients accountable, including when they improperly spend disaster assistance funds. At the same time, FEMA’s mission is to support our citizens and first responders to ensure that as a nation we work together to build, sustain and improve the nation’s capability to recover from and mitigate all hazards. FEMA assistance in the wake and aftermath of a disaster enables communities to recover and build greater resilience. Therefore, FEMA historically, with the concurrence of Treasury, does not offset debts from disaster assistance funds because it is counterproductive to recovery and resilience-building.

As stated above, FEMA is awaiting further guidance and training from Treasury on the use of passive collection with respect to internal offsets. FEMA will defer action on any internal offsets until the Agency receives the additional guidance and training from Treasury. In the meantime, FEMA is reengaging the State of Louisiana to pursue collection of this debt.

Recommendation #2: Develop improved collection policies and procedures to provide FEMA employees with specific guidance on how to collect debts.

Response: Concur: In FEMA’s original response to the Draft Report, FEMA indicated that its policy “Submission of Debt to the FEMA Finance Center: State, Local, Tribal, and Territorial



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Exhibit C (continued)

Debts” Directive FD 116-1 (the Directive) basically addressed the findings related to this recommendation. FEMA recognizes OIG’s remaining concerns with the Directive and will address them through an updated Directive. Specifically, the Directive will prescribe specific timeframes within which Program Office Representatives should act in identifying a potential debt. In addition, to the extent that the Treasury provides further guidance on passive collection, FEMA’s revised Directive will also address FEMA’s ability to use passive collection methods to offset debts. FEMA plan to finalize the revised Directive in FY 2015.

FEMA believes that the aforementioned revisions to the Directive will ensure FEMA’s policy is in accordance with the Federal Claims Collection Standards, which require Federal agencies to “aggressively collect” all debts arising out of activities of that agency and to undertake collection activities “promptly with follow-up action as necessary”.

On this last point and in closing, we believe it’s also important to highlight FEMA’s recent actions to collect debts owed from States and territories in accordance with FEMA’s existing Directive 116-1 and procedures. FEMA has demonstrated a commitment to debt collection and takes seriously its responsibility to collect all debts owed in a timely manner. As evidenced by the below chart, FEMA has a proven track record with respect to state debt collections , which shows that since FY 2010, FEMA continues to increase the amount of debt billed and collected each year from states and territories.

State/Territories Debt Collections

	FY10	FY11	FY12	FY13	FY14
Collected	\$23,925,769	\$36,581,634	\$47,728,440	\$50,058,314	\$71,912,764

Source: FEMA Office of Chief Financial Office

We recognize the need to continue to improve the debt collection process, including addressing the recommendations raised in this report. We appreciate OIG’s willingness to work with us on presenting the findings of this report and determining the appropriate path forward.

We again thank you for the work that you and your team did to inform us of the new debt authorities we can now use to enhance our overall debt collection results. We look forward to OIG’s final report for “FEMA’s Efforts to Collect a \$23.1 Million Debt from the State of Louisiana Should Have Been More Aggressive”, with the changes and clarifications discussed herein. Please direct any questions regarding this response to Gary McKeon, FEMA’s Audit Division Director, at 202-646-1308.



Appendix A

Objectives, Scope, and Methodology

The Department of Homeland Security Office of Inspector General 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.

Our audit objectives were to (1) assess the adequacy of FEMA's efforts to collect the \$23.1 million due from the State, and (2) determine whether FEMA followed Federal regulations and FEMA guidelines in its efforts to collect this debt.

We reviewed the circumstances surrounding FEMA's creation and subsequent collection efforts of the \$23.1 million Bill for Collection due from the State; interviewed officials from FEMA Office of Chief Financial Officer, FEMA Finance Center, FEMA Headquarters, FEMA Region VI, and the United States Department of the Treasury (Treasury); reviewed Federal statutes and regulations and FEMA guidelines related to debt collection; and performed other procedures considered necessary to accomplish our objective. We did not assess the overall adequacy of FEMA's internal controls applicable to its debt collection activities because it was not necessary to accomplish our audit objective. We did, however, gain an understanding of FEMA's policies and procedures for debt collections.

We conducted this performance audit between April 2013 and October 2013, pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those 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 upon our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objective. We conducted this audit by applying the statutes, regulations, and FEMA policies and guidelines in effect at the time the \$23.1 million debt from the State became due to FEMA.



Appendix B

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