

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

FEMA's Efforts To Recoup Improper Payments in Accordance With the Disaster Assistance Recoupment Fairness Act of 2011 (6)



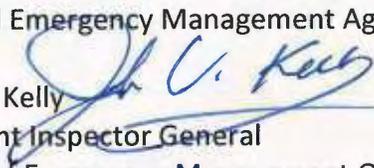


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Department of Homeland Security

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

June 21, 2013

MEMORANDUM FOR: Joseph L. Nimmich
Associate Administrator, Response and Recovery
Federal Emergency Management Agency

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

SUBJECT: *FEMA's Efforts To Recoup Improper Payments in
Accordance With the Disaster Assistance Recoupment
Fairness Act of 2011 (6)*

Attached for your information is our final letter report, *FEMA's Efforts To Recoup Improper Payments in Accordance With the Disaster Assistance Recoupment Fairness Act of 2011 (6)*. As required by the Act, we are reporting on the cost-effectiveness of FEMA's efforts to recoup improper payments. This is the last in a series of six reports that we issued every 3 months beginning March 2012.

The report contains two recommendations aimed at improving FEMA's reviews and processes of future debt recoupment cases. Your office did not respond to these recommendations. As prescribed by the Department of Homeland Security Directive 077-01, Follow-Up and Resolutions for Office of Inspector General Report Recommendations, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until your response is received and evaluated, the recommendations will be considered open and unresolved.

Consistent with our responsibility under the *Inspector General Act*, we are providing copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Major contributors to this report are Kaye McTighe, Director; Adrian Dupree, Audit Manager; and Stuart Josephs, Auditor.



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Please call me with any questions, or your staff may contact Kaye McTighe, Director, Office of Emergency Management Oversight, at (202) 254-4100.

Attachment



Background

The *Disaster Assistance Recoupment Fairness Act of 2011* (DARFA; Section 565 of the *Consolidated Appropriations Act, 2012*, Public Law 112-74) provided a limited-time, discretionary authority for the Federal Emergency Management Agency (FEMA) Administrator to waive debts arising from improper payments provided for disasters declared between August 28, 2005, and December 31, 2010. Otherwise, FEMA was required to recoup improperly paid amounts under Federal debt collections laws.

The Administrator was authorized to waive a debt if the excessive payment was based on FEMA error; there was no fault by the debtor; collection of the debt was against equity and good conscience; and the debt did not involve fraud, a false claim, or misrepresentation by the debtor or others with an interest in the claim. FEMA was authorized to grant a waiver to eligible debtors with an adjusted gross income less than or equal to \$90,000 and, subject to certain conditions, only a partial waiver to those with an adjusted gross income greater than \$90,000. DARFA directed the Department of Homeland Security (DHS) Inspector General to report on the cost-effectiveness of FEMA's efforts to recoup improper payments. This is the last in a series of six reports issued every 3 months through June 2013.

Following Hurricanes Katrina and Rita in 2005, and other disasters up to December 31, 2010, FEMA disbursed more than \$8 billion in assistance payments, some of which were later determined to have been improperly paid to individuals who were ineligible or who received duplicate payments. The debts in question arose in part because FEMA relaxed its internal controls in order to provide expedited delivery of assistance grants to displaced disaster survivors. The relaxed internal controls involved potential payments of \$643.3 million to 167,488 recipients.¹ After reviewing all of the cases, FEMA reduced the original estimate and determined that 91,178 recipients, who received more than \$418.3 million, were candidates for recoupment.² According to FEMA, there is sufficient justification to waive the debt obligations and not to recoup payment from the other 76,310 recipients, who collectively received approximately \$225 million in disaster assistance.

¹ Out of the \$643.3 million in individual assistance payments, \$621.6 million was provided to Hurricane Katrina and Rita disaster survivors.

² This debt amount is based on the average amount Notice of Waiver letter recipients received. FEMA originally estimated that the candidates for recoupment received more than \$371 million.



Overview

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

1. For the purposes of OIG reporting, FEMA efforts are defined as undertakings such as (i) notifying potential debtors; (ii) adjudicating and reviewing responses; (iii) evaluating support provided; (iv) making arrangements to collect, waive, partially waive, or terminate debt, and refer matters to the U.S. Department of the Treasury; (v) implementing quality control measures; and (vi) training staff to perform the above tasks.
2. The timeframe for the above FEMA efforts will be 15 days prior to the legislatively mandated deadline for each of the six serial OIG reports (e.g., this last OIG report covers our assessment activities through June 8, 2013).
3. Costs incurred by FEMA include equipment and contractual expenses, salaries of assigned temporary and permanent staff, and refunds to those who were originally required to repay their disaster assistance benefits but were later deemed eligible for a waiver.

Based on our reviews of FEMA's efforts to recoup improper payments, we determined that FEMA generally processed cases in accordance with DARFA and FEMA's implementing regulations. However, FEMA did not always properly grant waivers for DARFA cases it adjudicated. Specifically, about 30 percent of the cases we reviewed in our statistically validated sample did not have adequate support to grant waivers. Additionally, FEMA needed to review and process nearly 30,000 DARFA debt recoupment cases. FEMA needed to determine if these cases should be collected or compromised internally or referred to Treasury for collection. FEMA's Waiver Review Governance Group did not use a comprehensive quality assurance assessment to adjudicate DARFA waiver applications because it reviewed only debts that FEMA initially determined it should not waive. This governance group did not review any debts initially authorized a waiver.

This sixth and final DARFA report contains recommendations aimed at improving FEMA's reviews and processes of future debt recoupment cases.



Results of Review

FEMA's effort to recoup improper payments in accordance with DARFA was cost effective. Congress passed the DARFA legislation in an attempt to mitigate the potentially unfair impact caused by the improper payments made by FEMA to individuals receiving disaster assistance subsequent to Hurricane Katrina and ending with disasters in December 2010. Congress could have drafted legislation that waived all such debt or created a process that provided FEMA the authority to waive the debt. Congress chose the latter. Because FEMA spent approximately \$13.9 million on DARFA related activities and is scheduled to collect more than \$15.2 million from debtors that did not meet DARFA requirements to receive a waiver, it was cost effective for FEMA to reevaluate the appropriateness of collecting the debt specified in the DARFA legislation. In addition, FEMA could collect an additional \$281 million from debtors that never responded to Notice of Waiver letters significantly increasing cost effectiveness.

Although FEMA's processing of DARFA cases was cost effective, FEMA did not adequately document about \$58 million in potential improper payments it previously considered not warranted for recoupment. Specifically, FEMA determined that more than \$225 million in potential debts did not warrant recoupment. However, FEMA could only provide potential debt amounts totaling about \$167 million.

FEMA Processing of DARFA Cases Was Cost Effective

FEMA's processing of DARFA cases was cost effective. FEMA expended approximately \$13.9 million on DARFA-related activities. However, compared with the alternative of waiving all improper payments, FEMA is scheduled to collect more than \$15.2 million from debtors that did not meet DARFA waiver requirements. FEMA also could potentially collect more than \$281 million from debtors that never responded to Notice of Waiver letters and are therefore required to repay the individual assistance improper payments.³

In 2006, FEMA began recoupment efforts for disaster assistance provided to individuals affected by disasters declared after Hurricane Katrina. However, in 2008, FEMA terminated its recoupment process in light of a court injunction that ordered FEMA to revise its debt collection regulations. In 2011, FEMA revised its recoupment process to collect improper payments, but some members of Congress raised concerns about the fairness of FEMA collecting improper payments caused by FEMA error especially when a

³ An additional \$13.3 million in DARFA recoupment cases were terminated, were withdrawn, or involved deceased debtors.



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significant amount of time had elapsed before FEMA provided actual notice to the debtors. Thus, in December 2011, Congress passed and the President signed DARFA. DARFA granted FEMA the authority to waive debt that met certain criteria. Appendix B lists a timeline of events related to DARFA.

FEMA provided OIG with information that demonstrates the cost-effectiveness of their efforts with processing DARFA cases. FEMA adjudicated 20,534 cases totaling \$114,058,577 that it initially identified for recoupment. FEMA has granted waivers for applicants in approximately 86 percent of the cases it has reviewed. Specifically, FEMA has granted 17,680 waivers and denied 2,854 waivers, totaling \$98,827,811 and \$15,230,766, respectively. Since December 2011, FEMA has expended an estimated \$13,910,717 on DARFA-related activities. This includes planning and implementing the process, training employees, conducting waiver activities, and processing debts and applicant refunds. The total to be collected from denials exceeds the amount expended by approximately \$1.3 million. Table 1 summarizes FEMA’s DARFA-related activities.

Table 1. Cost-Effectiveness of DARFA Activities as of May 9, 2013

DARFA Revenues		
Amount of Debt Adjudicated	\$114,058,577	
Amount of Debt Waived	(98,827,811)	
DARFA Debt Scheduled To Be Collected		\$15,230,766
DARFA Expenses		
FEMA Staff	\$6,706,186	
Contracting	111,872	
Applicant Refunds	7,092,659	
Total DARFA Expenses		(\$13,910,717)
Net Revenue from DARFA Adjudication Processes		\$1,320,049

Source: FEMA.

In addition to the \$15.2 million, we determined that FEMA certified for recoupment approximately 65,000 debt cases totaling more than \$281 million.⁴ Most of these cases involved debtors never responding to Notice of Waiver letters. It is reasonable to assume that a majority of these debtors will have to return individual assistance improper payments they received.

FEMA’s recoupment efforts could have been more cost effective if it would have attempted to recoup from all debtors that received improper payments during the August 2005 through December 2010 timeframe without adjudicating any DARFA cases.

⁴ OIG-13-51, *FEMA Efforts To Recoup Improper Payments in Accordance With the Disaster Assistance Fairness Act of 2011 (5)*, March 2013.



However, because of the unique circumstances involving the majority of these debtors, the many improper payments made because of FEMA error, and the amount of time elapsed since these disasters, Congress and the President decided to provide debtors the opportunity to have their cases adjudicated and potentially waived based on reasonable criteria. The DARFA legislation provided FEMA with the ability to waive certain debt given the facts and circumstances concerning the individual debts while at the same time not giving blanket waivers.

FEMA Did Not Adequately Document Potential Improper Payments It Determined Not Warranted for Recoupment

FEMA did not adequately document cases it considered not warranted for recoupment. FEMA determined that there were 76,310 potential debtors not warranted for recoupment totaling more than \$225 million. However, FEMA could provide documentation only for cases totaling about \$167 million. For nearly 30 percent (22,633) of these cases, FEMA was not able to provide potential improper payment amounts they initially questioned for recoupment.

In a prior OIG report, FEMA indicated that there were 167,488 potential debt cases totaling about \$643 million in improper payments.⁵ FEMA claimed these potential improper payments arose in part because FEMA relaxed its internal controls in order to provide expedited delivery of assistance grants to displaced disaster survivors. From June 2007 through January 2011, FEMA did not attempt to recoup improper disaster assistance payments, and past and current Administrators were hesitant to restart the recoupment process. As a result, the 167,488 potential debt cases in improper payments disbursed since Hurricane Katrina and ending with disasters in December 2010 had gone uncollected for several years.

FEMA officials said they conducted a manual review of these potential debt cases to determine which cases are recoupable. If FEMA determined recoupment was warranted they also wanted to identify the improper payment amount before sending a Notice of Debt letter. As a result of their reviews, it was determined that 76,310 potential debt cases did not warrant recoupment. A FEMA official said they determined at the beginning of their review some cases would not warrant collection.

There were 22,633 disaster assistance cases that FEMA listed in its National Emergency Management Information System (NEMIS) database without identifying the potential debt amount to be recouped. FEMA officials told us the reason why those cases did not have a debt amount is that it is FEMA's policy to delete applicant recoupment

⁵ OIG-11-84, *Assessment of FEMA's Fraud Prevention Efforts*, May 2011.



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information when the debt is no longer valid. FEMA officials told us they would have deleted the recoupment amount information in the remaining 53,677 cases; however, system problems as well as other priorities with recoupment reviews prevented FEMA from deleting the debt information for all the remaining cases. A comprehensive review of these case files is not possible without having documentation that substantiates the potential debt amount FEMA was questioning.

Table 2 lists the potential debts associated with cases FEMA determined not warranted for recoupment.

Table 2. Potential Debt Amounts for Cases Not Warranted for Recoupment

Category	Debtors	Amount (in millions)
Cases with Potential Debt Amounts	53,677	\$167
Cases with No Potential Debt Amounts	22,633	0
Difference in Potential Debt Amount		58
Total	76,310	\$225

Source: FEMA.

Lessons Learned for Future Disasters

Although FEMA did an adequate job with its recoupment efforts, we identified some areas where FEMA could improve its quality control for processing debtor cases during future disasters. FEMA needs to ensure its adjudicators adequately assess debt cases for inconsistencies; check and compare the debt to other registrations for duplication of benefits; and ensure proof of occupancy, primary residence and other areas that were prime causes for improper payments. For example, in our December 2012 report, we identified cases where individual assistance payments were made to registrants at the same residence for identical personal property, rental assistance provided to registrants that never left the damaged dwelling, and improper payments made to those who could not prove that their primary residence was in the disaster area. In our March 2013 report, we cited the below examples where the individual assistance payments should not have been warranted:

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



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

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

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

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

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

Case file records indicate that the applicant received rental and expedited assistance as a result of internal controls being lowered and the system not cross-referencing the applicant. There is no evidence in the case file that warrants the debtor receiving a waiver. The debtor provided altered receipts and leases for residences



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never occupied and, as mentioned above, the property's landlord stated that the applicant did not reside at the rental address.

FEMA needs to improve its tracking of disaster assistance cases. We identified issues with the completeness and accuracy of the data concerning disaster registrations that were deemed not warranted for recoupment. Specifically, FEMA could not provide potential improper payment information for nearly 30 percent (22,633) of these registrations. Even though it was decided that they no longer warranted recoupment, there still needs to be documentation of the questioned payment amounts for each registrant to document FEMA decisions concerning recoupment.

Additionally, FEMA needs to improve its quality assurance assessment plans for reviewing recoupment cases. As reported in our March 2013 report, FEMA's Waiver Review Governance Group did not review any DARFA-waived debts as a part of its quality assurance assessment. FEMA's Quality Assurance Quality Control group normally conducts comprehensive quality assurance reviews for disaster assistance cases; however, this group did not review any DARFA cases. FEMA needs to ensure it has a comprehensive quality assurance assessment plan to review all types of disaster assistance cases to include special reviews such as DARFA. This proactive approach ensures that all categories of cases are assessed for quality assurance whether they are part of a regular or special review.

Conclusion

FEMA efforts with processing DARFA recoupment cases were cost effective. FEMA is scheduled to collect more than \$15.2 million and it expended \$13.9 million on DARFA related activities. However, there are opportunities for FEMA to improve its recoupment and quality assurance efforts for future disasters. For example, FEMA did not adequately document cases it considered not warranted for recoupment. Specifically, they could not provide recoupment amount information for potential improper payments for nearly 30 percent of these cases. FEMA needs to ensure that all information for recoupment cases and FEMA decisions are properly reflected in its databases.

Additionally, there needs to be an in depth review of applicants that received improper payments of individual assistance to prevent these types of payments in the future.



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Finally, FEMA's Waiver Review Governance Group reviewed only DARFA-denied cases when conducting its quality assurance assessments. For future recoupment efforts, FEMA should conduct comprehensive quality assurance reviews to ensure it equitably adjudicates all categories of cases in accordance with FEMA guidelines whether regular or special review.

Recommendations

We recommend that FEMA's Associate Administrator, Response and Recovery:

Recommendation 1:

Issue a directive stating that if FEMA is instructed to conduct a special review of potential recoupment cases, FEMA will apply, at a minimum, all of its comprehensive quality assurance review procedures.

Recommendation 2:

Establish in the National Emergency Management Information System an audit trail that documents FEMA's decisions concerning the status of a potential debt. Specifically, in addition to documenting the reasons why FEMA no longer believes these cases require recoupment, FEMA should maintain in the National Emergency Management Information System information concerning the amount initially identified as the potential improper payment.

Management Comments

FEMA was given an opportunity to respond to these recommendations; however, they did not provide any comments, whether they concur or non-concur.



Appendix A

Objective, Scope, and Methodology

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

The objective of this review was to provide an interim report on the cost-effectiveness of FEMA's efforts to recoup improper payments in accordance with DARFA. To accomplish our objective, we reviewed and analyzed FEMA's Management Directive, *Waiving Debts Pursuant to the Disaster Assistance Recoupment Fairness Act of 2011*; Federal laws, regulations, and testimony; prior OIG reports relevant to our review; and other applicable documents.

We reviewed the cost-effectiveness of FEMA processing DARFA debt recoupment cases. We used cost information FEMA provided for expenditures that included personnel costs for processing DARFA cases, costs for disseminating Notices of Waiver and other correspondence, and costs for granting refunds to applicants. We also reviewed information regarding cases FEMA determined were not warranted for DARFA review. Additionally, we reviewed information from our prior DARFA reports and contacted FEMA officials to identify lessons learned for future disasters from FEMA processing DARFA cases. Fieldwork was conducted at OIG headquarters and we corresponded through phone calls and emails with staff at the VA National Processing Service Center and FEMA headquarters in Washington, DC.

We conducted this review between March and June 2013 under the authority of the *Inspector General Act of 1978*, as amended, and according to the Quality Standards for Inspections issued by the Council of the Inspectors General on Integrity and Efficiency.

We appreciate the efforts by FEMA management and staff to provide the information and access necessary to accomplish this review.



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Appendix B DARFA Timeline

August 2005 to December 2010

- FEMA dispersed more than \$8 billion disaster assistance payments, some payments were improperly paid

2006

- FEMA began recoupment efforts for those disaster recipients improperly paid

June 2007

- Disaster assistance applicants facing recoupment filed a class action lawsuit against FEMA, alleging that it did not provide sufficient procedural due process

September 2008

- FEMA terminated its recoupment process
 - Withdrew recoupment notifications of debt that it sent to survivors of Hurricanes Katrina and Rita and later disasters
 - Published a notice in the Federal Register that announced FEMA's intention to implement a revised recoupment process

2011

- March** - FEMA commenced the revised recoupment process for the collection of overpayments
 - FEMA determined that 91,178 individuals, who received more than \$418.3 million in assistance, were candidates for recoupment
 - FEMA determined that 76,310 individuals who received more than \$225 million in assistance, are not warranted for recoupment
- March through December** - Some members of Congress were concerned about the fairness of collecting debts that may have been based on FEMA error in addition to the time elapsed since the improper payments were made
- December** - Congress passes and the President signs DARFA legislation that allows the FEMA Administrator to waive a debt based on an improper payment

2012

- February** - FEMA sent out Notice of Waiver letters to disaster assistance recipients providing them an opportunity to have their debt waived if DARFA requirements are met
- September** - DARFA eligibility ended for those disaster assistance recipients applying for a waiver
- September** - FEMA processed cases for applicants who can prove they have a different address from the one FEMA has in their system and where they sent the Notice of Debt Letter and the Notice of Waiver Letter

Source: FEMA.



Appendix C

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