

Response to Allegations of Mismanagement in FEMA's Office of the Chief Security Office





DHS OIG HIGHLIGHTS

Response to Allegations of Mismanagement in FEMA's Office of the Chief Security Officer

February 19, 2016

Why We Did This Inspection

On April 8, 2014, the Department of Homeland Security (DHS) Office of Inspector General Hotline received an anonymous complaint alleging that the Federal Emergency Management Agency's (FEMA) Office of the Chief Security Officer was hiring employees with criminal backgrounds, allowing employees to violate overtime and compensatory time policies, and using the Disaster Relief Fund inappropriately.

What We Recommend

We recommend FEMA's Chief Security Officer enforce FEMA's premium pay policy for compensatory time and DHS' Chief Financial Officer assess whether there was an *Antideficiency Act* violation.

For Further Information:

Contact our Office of Public Affairs at (202) 254-4100, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

In 2011, the former FEMA Chief Security Officer hired two employees with criminal convictions in their backgrounds. Our analysis of employee records from 2011 to 2014 in the Office of the Chief Security Officer's Fraud and Internal Investigations Division disclosed two more employees with criminal conduct in their backgrounds. FEMA's Office of the Chief Security Officer no longer employs these four individuals. FEMA premium pay records from 2011 to 2014 for employees in the Fraud and Internal Investigations Division showed that division management allowed employees to violate FEMA's premium pay policy for compensatory time in 2014; premium pay requests from the same period did not reveal any overtime violations. As a result of hiring employees with criminal backgrounds or conduct, the Office of the Chief Security Officer spent \$349,944 unnecessarily. Finally, from 2013 to 2014, the Office of the Chief Security Officer misused the Disaster Relief Fund by allowing employees to perform non-disaster-related activities, which violates the Stafford Act and may also be a potential *Antideficiency Act* violation.

FEMA Response

FEMA officials concurred with both recommendations, and FEMA has taken steps to improve the functioning of its Office of the Chief Security Officer. Also, DHS' Chief Financial Officer will lead an investigation to determine whether an *Antideficiency Act* violation occurred. We consider recommendation 1 resolved and closed and recommendation 2 resolved and open.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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

February 19, 2016

MEMORANDUM FOR: The Honorable W. Craig Fugate
Administrator
Federal Emergency Management Agency

FROM: John Roth *John Roth*
Inspector General

SUBJECT: *Response to Allegations of Mismanagement in FEMA's
Office of the Chief Security Officer*

For your action is our final report, *Response to Allegations of Mismanagement in FEMA's Office of the Chief Security Officer*. We incorporated the formal comments provided by your office.

The report contains two recommendations aimed at improving the management of FEMA's Office of the Chief Security Officer. Your office concurred with both recommendations.

Based on information provided in your response to the draft report, we consider recommendation 1 resolved and closed and recommendation 2 resolved and open. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions and of the disposition of any monetary amounts.

Please send your response or closure request to
OIGInspectionsFollowup@oig.dhs.gov.

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

Please call me with any questions, or your staff may contact Anne L. Richards, Assistant Inspector General for Inspections and Evaluations, at (202) 254-4100.



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Background

On April 8, 2014, Department of Homeland Security (DHS) Office of Inspector General (OIG) Hotline personnel received an anonymous complaint alleging fraud, waste, abuse, and mismanagement by senior level managers in the Federal Emergency Management Agency's (FEMA) Office of the Chief Security Officer (OCSO). The complainant alleged OCSO management hired employees with criminal backgrounds and violated FEMA's premium pay policy. The complainant also alleged that OCSO management misused the Disaster Relief Fund (DRF) by using DRF funds to hire employees who never performed disaster-related activities. The DRF is to be used to direct, coordinate, manage, and fund eligible response and recovery efforts associated with domestic major disasters and emergencies.

FEMA OCSO provides security services, programs, and activities designed to protect FEMA personnel, facilities, information and equipment, and to mitigate the risk of loss to the Federal Government due to fraudulent activities. Within OCSO, the Fraud and Internal Investigations Division (FIID) focuses on investigations and enforcement actions to protect FEMA personnel and assets. Within FIID there are two offices, the Fraud Prevention and Investigation Branch (FPIB) in Orlando, FL, and the Internal Investigation Branch (IIB) in Arlington, VA.

Established in 2006, the FPIB identifies, mitigates, and prevents fraudulent losses of Federal funds and assets through fraud awareness training, comprehensive research, investigation, and loss recoupment. Conceptualized in 2010 and initially staffed in 2011, FEMA reorganized the Arlington, VA function as the IIB in April 2012. The IIB plans, leads, and oversees criminal, administrative, and workforce integrity investigations related to violations of Title 18 of the United States Code, Federal regulations, and FEMA policy and procedures. The FPIB and IIB conduct these activities in partnership with DHS OIG.

Fiscal year 2014 operating costs for FIID totaled about \$4 million, as shown in chart 1. In June 2015, FIID had 27 employees, of which 3 were permanent full-time (PFT) employees and 24 were *Robert T. Stafford Disaster Relief and Emergency Act* (Stafford Act) Cadre of On-Call Response and Recovery Employees (CORE).¹ FEMA compensates COREs from the DRF.

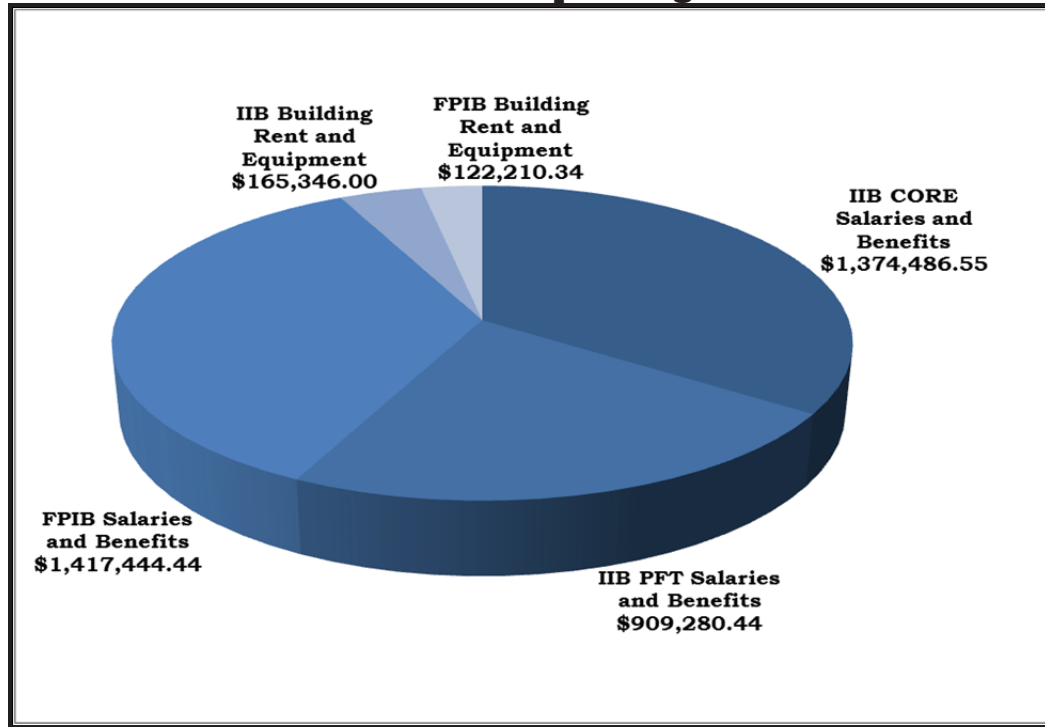
¹ Pursuant to Section 306(b) of the Stafford Act, FEMA appoints COREs temporarily to perform disaster-related operational or support work specific to preparedness, response, recovery, and mitigation of disasters, as specified under the act.



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Chart 1: FIID Fiscal Year 2014 Operating Costs



Source: OIG analysis of FEMA data

DHS OIG recommended in its May 2011 report, *Assessment of FEMA's Fraud Prevention Efforts* (OIG-11-84), that FEMA reallocate resources to increase the FPIB's staff and budget. To comply with the recommendation, FEMA's former Chief Security Officer (CSO) hired nine COREs to work in IIB investigating disaster assistance fraud and violations of Title VI of the *Civil Rights Act of 1964*. Between May and August 2013, OCSO leadership also hired eight additional COREs to work in IIB investigating Hurricane Sandy public assistance² fraud cases.

² FEMA's Public Assistance grant program provides supplemental disaster grant assistance for debris removal, emergency protective measures, and the repair, replacement, or restoration of disaster-damaged, publicly owned facilities and the facilities of certain private nonprofit organizations.



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Results of Inspection

In 2011, the former FEMA CSO hired two employees with criminal convictions in their backgrounds. Our analysis of FIID employee records from 2011 to 2014 disclosed two more employees with criminal conduct in their backgrounds. FEMA OCSO no longer employs these four individuals. We also analyzed FEMA premium pay records from 2011 to 2014 for FIID employees, which showed that division management allowed employees to violate FEMA's premium pay policy for compensatory time in 2014. Our review of premium pay requests for this period did not reveal any overtime violations. As a result of hiring employees with criminal backgrounds or conduct, OCSO spent \$349,944 unnecessarily. Finally, from 2013 to 2014, OCSO misused the DRF by allowing employees to perform non-disaster-related activities.

OCSO Hired Employees with Criminal Backgrounds

In 2011, the former CSO was the FIID hiring official and also supervised FEMA's Personnel Security Branch Chief. This organizational structure created a conflict of interest because there was no separation of duties in OCSO's suitability adjudication process. As a result, FEMA OCSO hired four FIID employees who were not suitable for Federal employment and spent \$349,944, excluding benefits, for their salaries.

Before joining the Federal Government, applicants must meet suitability standards³ in the Code of Federal Regulations (5 CFR § 731.202); Federal employees must maintain these standards for continued employment. Suitability adjudicators examine a person's character or conduct over time to determine whether they are suitable for employment, or whether they should be retained as a Federal employee. Suitability adjudicators are to consider criminal or dishonest conduct as a basis for finding an applicant or Federal employee unsuitable for Federal employment.

Between May 2011 and July 2011, FEMA OCSO hired 12 FIID employees. The former CSO had prior personal relationships with two of these employees. When determining suitability for the two employees, the former Personnel Security Branch Chief was aware both had criminal backgrounds. However, because of the CSO's influence, the Branch Chief did not follow appropriate suitability adjudication procedures and disregarded the criminal backgrounds. When the former FEMA Associate Administrator for the Mission Support Bureau became aware of the inappropriate suitability determinations in July 2011, the Associate Administrator suspended OCSO's authority to adjudicate

³ Suitability refers to a person's identifiable character traits and conduct sufficient to decide whether employment or continued employment would or would not protect the integrity or promote the efficiency of service to the Federal Government.



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background investigations for its current and prospective employees, and DHS OCSO assumed this responsibility.

In 2012, DHS OIG completed investigations that confirmed the two employees with prior association to the former CSO had criminal convictions in their backgrounds. FIID employee records from 2011 to 2014 disclosed two additional employees with criminal conduct in their backgrounds. The four employees, the Personnel Security Branch Chief, and the former CSO no longer work for FEMA OCSO.

Also, in August 2011 and June 2013, DHS OCSO conducted security compliance reviews of FEMA headquarters. The reviews assessed FEMA's management and oversight of multiple security disciplines throughout FEMA, including the personnel security program in FEMA OCSO. In response to these reviews, FEMA OCSO provided DHS OCSO with corrective actions and ongoing activities it implemented to address review recommendations.

In March 2015, the DHS CSO informed the FEMA CSO, "circumstances have improved significantly at FEMA Personnel Security Division." The DHS CSO returned full adjudication authority to FEMA OCSO. As a result of these actions, we are not making any recommendations concerning this allegation.

Division Management Allowed FIID Employees to Violate FEMA's Premium Pay Policy in 2014

In 2014, FIID management violated FEMA's existing premium pay policy for compensatory time by allowing COREs to accrue more compensatory time than allowed. This practice did not continue past 2014. FIID employee premium pay requests for overtime from 2011 to 2014 did not show any overtime violations.

According to FEMA Manual 253-2-1, *Premium Pay*, dated February 11, 2014, FEMA employees working in response to a presidentially declared disaster or emergency must be compensated in paid overtime for all overtime work. COREs have the option to accrue compensatory time instead of paid overtime.⁴ However, once a CORE reaches 40 hours of compensatory time, the employee must first use a portion of the accrued compensatory time before earning additional compensatory time. Any additional overtime work in excess of the 40 hours must be compensated with paid overtime.

In 2014, two COREs accrued compensatory time inappropriately because they carried balances greater than 40 hours over multiple pay periods. The COREs accrued excess compensatory time disasters. In four instances, the COREs did not use a portion of the accrued compensatory time before earning additional

⁴ Compensatory time is time off with pay in lieu of overtime pay, generally for irregular or occasional overtime work. One hour of compensatory time off is granted for each hour of overtime work performed.



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compensatory hours as required. Also once COREs exceeded the 40 hours of compensatory time they did not record the additional hours as overtime in accordance with FEMA's February premium pay policy.

Recommendation 1. We recommend that the FEMA Chief Security Officer enforce FEMA's premium pay policy for compensatory time for OCSO employees.

OCSO Misused the DRF from 2013 to 2014

According to FEMA's CORE conditions of employment, COREs are to perform disaster-related work of an operational or support nature associated with disaster preparedness, response, recovery, and mitigation as specified in the Stafford Act. From 2013 to 2014, FIID management violated these conditions of employment by allowing IIB COREs to perform non-disaster-related work. This was a violation of the Stafford Act and a potential *Antideficiency Act* violation.

FEMA officials said it was "common practice" to assign some COREs non-disaster-related duties. We were not able to quantify the magnitude of FIID non-disaster-related CORE assignments from 2013 to 2014 because FIID's case tracking system did not distinguish between disaster-related and non-disaster related cases until January 2015.

In 2013, FIID hired IIB COREs to investigate disaster-related cases, but the work did not materialize as expected. Therefore, FIID management assigned COREs as lead investigators to investigate FEMA PFT employee misconduct cases not related to a particular disaster. To determine whether additional cases were related to a specific disaster, we reviewed 19 FEMA PFT employee misconduct case files from 2013 through 2014. We determined that 13 of these 19 cases were not disaster related. For example, FEMA OCSO assigned COREs to investigate an allegation of assault and disruptive behavior between two PFT employees. The incident occurred in a senior employee's office and involved a dispute regarding administrative actions taken against a subordinate employee. Three COREs participated in the assignment.

FIID's employee misconduct case tracking system used during this timeframe did not clearly identify whether or not cases were related to a specific disaster. As a result, we could not determine the total number of non-disaster-related FEMA PFT employee misconduct cases COREs investigated. Since modifying its case tracking system in January 2015, FIID can identify disaster-related cases.

During field work, FIID management said they assigned COREs to investigate PFT employee misconduct cases to gain experience in Federal investigations and to keep COREs occupied. According to the CORE conditions of employment, FEMA can release and recall COREs based on disaster-related workload requirements. FIID management should have released the COREs



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when disaster-related assignments did not materialize. Instead, OCSO retained all IIB COREs and assigned them non-disaster-related tasks.

A FEMA official responsible for appropriate DRF use confirmed “COREs should work on open, active disasters.” The same official said that COREs should not conduct investigations unrelated to disasters, although they can investigate misconduct of other COREs or PFT employees performing disaster-related work.

Charging a CORE’s salary to the DRF when the CORE’s duties were not, in fact, disaster related, may have been a violation of the Stafford Act (42 U.S.C. § 5121) and the *Antideficiency Act* (31 U.S.C. § 1301).⁵ Title 42 U.S.C. § 5121, *et. seq.*, provides for the appointment of temporary employees to deliver assistance to states and localities in the event of a declared “emergency” or “major disaster.” Title 31 U.S.C § 1301 requires that an appropriation shall be applied only to the objects for which the appropriations were made.

Recommendation 2. We recommend that the DHS Chief Financial Officer conduct an investigation on whether an *Antideficiency Act* violation occurred and report its findings to DHS OIG.

⁵ 31 U.S.C. § 1341 prohibits Federal agencies from obligating or expending Federal funds in advance or in excess of an appropriation.



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Management Comments and OIG Analysis

We evaluated FEMA's written comments and made changes to the report where we deemed appropriate. A summary of FEMA's written response to the report recommendations and our analysis of the response follow. A copy of FEMA's response, in its entirety, is included as appendix A. In addition, we received technical comments from FEMA and incorporated these comments into the report where appropriate. FEMA concurred with recommendations 1 and 2. We appreciate FEMA's comments and contributions.

Management Response to Recommendation 1

FEMA officials concurred with recommendation 1. In its response, FEMA informed us that the previous overtime policy (FEMA Instruction 3200.1), which was in effect from January 18, 2006, to February 11, 2014, did not contain a cap on the number of hours of compensatory time COREs could accrue. However, on February 11, 2014, FEMA issued a revised overtime policy as part of FEMA Manual 253-2-1, *Premium Pay*. Under this policy, FEMA established a cap of 40 hours of compensatory time that COREs may accrue. However, the cap only applies to compensatory time accrued while working in response to a presidentially declared disaster or emergency; this time is billed to the funding account specific to that disaster or emergency. Any overtime hours a CORE works on a presidentially declared disaster or emergency, after the CORE has accrued a balance of 40 hours of compensatory time, must be compensated with overtime pay. According to FEMA, OIG's assertion that "FIID incurred \$4,663 in ineligible costs for CORE-accrued compensatory time" is incorrect because FIID was required to compensate its employees for overtime hours, and the cost is the same whether that compensation is paid as compensatory time or overtime pay. FEMA said it is enforcing its premium pay policy for compensatory time and requested this recommendation be closed.

OIG Analysis

We agree that FIID was required to compensate its employees for overtime hours worked in response to a presidentially declared disaster. Therefore, FIID did not incur \$4,663 in ineligible costs for CORE accrued compensatory time. However, once COREs exceeded the 40 hours of compensatory time they did not record the additional hours as overtime in accordance with FEMA's February premium pay policy. COREs did not accrue or record compensatory time in error after 2014. In addition, FEMA officials said FEMA has taken a number of corrective actions to prevent recurrence of similar situations, and they are enforcing the premium pay policy for compensatory time.

We consider FEMA's actions responsive to the intent of recommendation 1, which is resolved and closed. No further reporting from FEMA regarding this recommendation is necessary.



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Management Response to Recommendation 2

FEMA officials concurred with recommendation 2. In its response, FEMA informed us that the DHS Chief Financial Officer's (CFO) Office of Financial Management will lead an *Antideficiency Act* investigation in accordance with Section 2.5 of DHS' *Financial Management Policy Manual*. Specifically, on January 4, 2016, the DHS Deputy Under Secretary for Management and the CFO directed FEMA's acting CFO to conduct a preliminary investigation and report the results to the DHS CFO within 60 days. FEMA's preliminary investigation will assess the facts against Department policy and legal interpretation, which permits the use of Stafford Act employees for non-disaster related work, provided that the combined disaster and non-disaster effort of a work unit is charged appropriately to the correct appropriation. Upon receipt of FEMA's report, the DHS CFO will take additional action(s), as appropriate. The estimated completion date is September 30, 2016.

OIG Analysis

We consider FEMA's actions responsive to the intent of recommendation 2, which is resolved and open. This recommendation will remain open pending our receipt of FEMA's preliminary *Antideficiency Act* investigation and documentation of any actions taken by the DHS CFO as appropriate.



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Objective, Scope, and Methodology

DHS OIG was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

The objectives of the inspection were to determine whether FEMA OCSO hired employees with criminal backgrounds, allowed employees to violate overtime and compensatory time policies, and used the DRF inappropriately.

To achieve our objectives, we examined FEMA directives, policies, and procedures for hiring qualified individuals and for overtime and compensatory time use within the component. We also reviewed:

- Mission statements and roles and responsibilities of the FPIB and IIB
- Investigations IIB performed since 2011
- Email transmissions from specific employees within OCSO
- Concept of operations, employee salaries, and benefits
- OCSO hiring practices for full-time and temporary positions
- FIID employee personnel files
- Background investigations conducted on FIID employees and respective adjudications
- FIID time and attendance, salaries, overtime, and compensatory time records
- DHS OIG investigations of former FEMA OCSO employees

We interviewed FEMA Mission Support Bureau leadership, FEMA OCSO leadership and staff, and FEMA FIID employees. In addition, we interviewed staff from FEMA's Office of Counsel, Office of the Chief Component Human Capital Officer, Office of the Chief Financial Officer, Stafford Act Staffing Office employees, and DHS Office of the Chief Human Capital Officer officials.

The April 8, 2014, complaint alleged close associations between FEMA OCSO leadership and several senior officials in the DHS OIG Office of Emergency Management Oversight and Office of Investigations. Due to the questioned objectivity of these DHS OIG offices, the DHS OIG Office of Integrity and Quality Oversight referred this complaint to the Office of Inspections and Evaluations for review.

The *Quality Standards for Inspection and Evaluation* for independence require in all matters relating to inspection work, the inspection organization and each individual inspector should be free both in fact and appearance from personal, external, and organizational impairments of independence. Because the complainant alleged there was a close relationship with some OIG officials, we excluded those officials from any work associated with our inspection. In our



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opinion, the appearance of this potential independence impairment had no effect on our conclusions and recommendations.

We conducted this review between November 2014 and June 2015 under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

The Office of Inspections and Evaluations major contributors to this report are Marcia Moxey Hodges, Chief Inspector; Angela Garvin, Lead Inspector; LaDana Crowell, Senior Inspector; Sheila Arguello, Inspector; Kelly Herberger, Communications Analyst; and Ja'nelle Taylor, Independent Reference Reviewer.



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Appendix A
FEMA Comments to the Draft Report

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

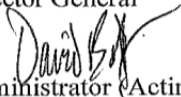


FEMA

RECEIVED

JAN 8 2016

MEMORANDUM FOR: Anne L. Richards
Assistant Inspector General
Office of Inspections and Evaluations
Office of Inspector General

FROM: David Bibo 
Associate Administrator (Acting)
Office of Policy and Program Analysis

SUBJECT: Response to Draft Report: "Response to Allegations of
Mismanagement in FEMA's Office of Chief Security Officer"
(Project No. 14-131-ISP-FEMA)

Thank you for the opportunity to review and comment on this draft report. The Federal Emergency Management Agency (FEMA) and Department of Homeland Security (DHS) Management Directorate (MGMT) appreciate the DHS Office of Inspector General's (OIG's) work in planning and conducting its review and issuing this draft report.

FEMA has taken steps to continually improve the functioning of its Office of the Chief Security Officer (OCSO). We are pleased to note OIG's recognition that a DHS Chief Security Officer (CSO) March 2015 assessment confirmed that "circumstances have improved significantly" within the FEMA OCSO division that is a subject of this draft report.

The draft report makes repeated references to hiring problems within FEMA OCSO dating to 2011. It is important to note that FEMA reported allegations regarding its former CSO to OIG in 2011, and subsequently worked closely with OIG throughout its investigation. FEMA took immediate action to relieve parties from their duties where appropriate and, upon completion of OIG's investigation in February 2012, removed the former CSO from the Senior Executive Service and the employee's position as CSO. Other responsible parties associated with the 2011 allegations reiterated in this draft report resigned from FEMA.

In addition, while the draft report notes that FEMA's OCSO violated premium pay policy for compensatory time in 2014, FEMA has already taken a number of corrective actions to prevent recurrence of similar situations. Notably, OIG did not identify any premium pay policy violations for *compensatory time* after 2014, nor any premium pay policy violations for *overtime* between 2011 and 2014.

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The draft report contains two recommendations with which FEMA and MGMT concur. Specifically, OIG recommended that:

Recommendation #1: The FEMA Chief Security Officer enforce FEMA's premium pay policy for compensatory time for OCSO employees.

Response: Concur. It is important to note that FEMA's previous overtime policy (FEMA Instruction 3200.1), which was in effect from January 18, 2006 to February 11, 2014, did not contain any cap on the number of hours of compensatory time that a Cadre of On-Call Response/Recovery Employee (CORE) could accrue. Specifically, on February 11, 2014, FEMA issued a revised overtime policy as part of FEMA Manual 253-2-1, "Premium Pay." Under this policy, FEMA established a cap of 40 hours of compensatory time that COREs may accrue, but that cap only applies to compensatory time hours accrued while working in response to a presidentially declared disaster or emergency and, by implication, that are therefore billed to the funding account specific to that disaster or emergency. Any overtime hours that a CORE works on a presidentially declared disaster or emergency, after the CORE has accrued a balance of 40 hours of compensatory time must be compensated with overtime pay. OIG's assertion that "FIID incurred \$4,663 in ineligible costs for CORE-accrued compensatory time" is incorrect because FIID was required to compensate its employees for overtime hours, and the cost is the same whether that compensation is paid as compensatory time or overtime pay.

Given the clarification provided above and the fact that FEMA is enforcing its premium pay policy for compensatory time, we request that OIG consider this recommendation resolved and closed.

Recommendation #2: The DHS Chief Financial Officer conduct an investigation on whether an *Anti-Deficiency Act* violation occurred and report its findings to DHS OIG.

Response: Concur. The DHS Chief Financial Officer's (CFO) Office of Financial Management will lead an ADA investigation in accordance with the DHS Financial Management Policy Manual, Section 2.5. Specifically, on January 4, 2016, the DHS Deputy Under Secretary for Management and CFO directed that FEMA's acting CFO conduct a preliminary investigation and report the results to the DHS CFO within 60 days. FEMA's preliminary investigation will assess the facts against agency policy and legal interpretation which permits the use of Stafford Act employees for non-disaster related work, provided that the combined disaster and non-disaster effort of a work unit is charged appropriately to the correct appropriation. Upon receipt of FEMA's report, the DHS CFO will take additional action(s), as appropriate. Estimated Completion Date: September 30, 2016.

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover. Please direct any



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questions regarding this response to Gary McKeon, Director of FEMA's GAO/OIG Audit Liaison Office, at (202) 646-1308. We look forward to working with you in the future.



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Appendix B

Report Distribution

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