

FEMA's Waiver Authority under the Disaster Recovery Reform Act of 2018





OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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

May 10, 2022

MEMORANDUM FOR: The Honorable Deanne Criswell
Administrator
Federal Emergency Management Agency

FROM: Joseph V. Cuffari, Ph.D. JOSEPH V
Inspector General CUFFARI

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JOSEPH V CUFFARI
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SUBJECT: *FEMA's Waiver Authority under the
Disaster Recovery Reform Act of 2018*

For your information is our final report, *FEMA's Waiver Authority under the Disaster Recovery Reform Act of 2018*. The report contains no recommendations.

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 Bruce Miller, Deputy Inspector General for Audits, at (202) 981-6000.

Attachment



DHS OIG HIGHLIGHTS

FEMA's Waiver Authority under the Disaster Recovery Reform Act of 2018

May 10, 2022

Why We Did This Audit

Section 1216 of the DRRA authorizes FEMA to waive certain debts resulting from covered assistance provided to individuals and households on or after October 28, 2012, when, among other conditions, the assistance was distributed in error by FEMA. We conducted this audit to determine whether covered assistance distributed in error by FEMA to individuals and households, in any 12-month period, exceeded 4 percent of the total amount of covered assistance distributed.

What We Recommend

We made no recommendations in this report.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

Several challenges limited our ability to fulfill the mandate in Section 1216 of the *Disaster Recovery Reform Act of 2018* (DRRA). For instance, the Federal Emergency Management Agency's (FEMA) data system does not capture Individuals and Households Program (IHP) assistance data in a manner that allows us to accurately calculate a percentage of distributions made in error in any 12-month period. In addition, the amount of data required to conduct the audit represents millions of rows of data, as well as underlying supporting documents. These efforts require considerable resources for FEMA to provide, and the Office of Inspector General to review, the IHP information.

Facing these limitations, we adopted an alternate approach to estimate FEMA's percentage of distributions made in error. Specifically, we analyzed FEMA's IHP Recoupment Processing Executive Summary for fiscal years 2015 through 2019 and concluded that, for these fiscal years, FEMA's percentage of distributions identified for recoupment was, on average, less than 1 percent — well below the DRRA's 4 percent threshold.

FEMA Response

FEMA concurred with OIG's assessment of the distribution of IHP assistance. Appendix A contains FEMA's response in its entirety.



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Background

Through its Individuals and Households Program (IHP), the Federal Emergency Management Agency (FEMA) provides financial assistance and, if necessary, direct services to individuals and households who are uninsured or underinsured and have necessary expenses and serious needs following a major disaster.¹ FEMA is required to recoup disaster assistance funds when it duplicates financial assistance from another source² or when funding is provided in error, spent inappropriately, or obtained through fraudulent means.³

The *Disaster Recovery Reform Act of 2018* (DRRA)⁴ authorizes FEMA to waive a debt owed to the Government if covered assistance⁵ provided to an individual or household on or after October 28, 2012, was distributed in error by FEMA, there was no fault on behalf of the debtor, and collection of the debt would be “against equity and good conscience.”⁶ Also, unless there is evidence of civil or criminal fraud, FEMA must notify applicants of its intent to recoup any covered assistance owed within 3 years of disbursement.⁷ FEMA may not waive a debt if it involves fraud, the presentation of a false claim, or misrepresentation.

Section 1216 of the DRRA requires the Department of Homeland Security Office of Inspector General to monitor the distribution of covered assistance to individuals and households to determine the percentage distributed based on an error. In addition, OIG is required to notify the FEMA Administrator and publish the determination in the Federal Register if the amount of covered assistance distributed in error exceeds 4 percent of the total amount of covered assistance distributed in any 12-month period. If the OIG finds that the error rate exceeds 4 percent, the DRRA removes FEMA’s authority to waive debt owed by individuals and households who received covered assistance distributed in error for disasters occurring after the date of publication of the OIG’s finding.

¹ Section 408, *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (Stafford Act), Public Law 93-288, as amended, 42 United States Code (U.S.C.) § 5174.

² Section 312(c), Stafford Act 42 U.S.C. § 5155.

³ 44 Code of Federal Regulations (CFR) 206.116(b).

⁴ *Disaster Recovery Reform Act of 2018*, Division D of Public Law 115-254, October 5, 2018.

⁵ The term “covered assistance” means assistance provided under Section 408 of the Stafford Act and in relation to a major disaster or emergency declared by the President under Section 401 or Section 501 of the Stafford Act on or after October 28, 2012.

⁶ Section 1216(a)(2)(A), *Disaster Recovery Reform Act of 2018*, Division D of Public Law 115-254, October 5, 2018.

⁷ Section 1216(b)(1), *Disaster Recovery Reform Act of 2018*, Division D of Public Law 115-254, October 5, 2018.



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To partially address the DRRRA mandate, we initiated an audit to determine whether covered assistance distributed based on an error by FEMA to individuals and households, in any 12-month period from October 1, 2014, through September 30, 2019, exceeded 4 percent of the total amount of covered assistance distributed. We set aside the DRRRA's requirement for OIG to indefinitely monitor FEMA's distribution of covered assistance as we are taking steps to clarify this aspect of the mandate before Congress. Even with our limited scope audit, we encountered several challenges related to data gathering and therefore adopted an alternate approach to estimate the percentage of FEMA's distributions made in error.

Results of Audit

Several challenges limited our ability to fulfill the mandate in Section 1216 of the DRRRA. For instance, FEMA's data system does not capture IHP assistance data in a manner that allows us to accurately calculate a percentage of distributions made in error in any 12-month period. In addition, the amount of data required to conduct the audit represents millions of rows of data, as well as underlying supporting documents. These efforts require considerable resources for FEMA to provide, and OIG to review, the IHP information.

Facing these limitations, we adopted an alternate approach to estimate FEMA's percentage of distributions made in error. Specifically, we analyzed FEMA's IHP Recoupment Processing Executive Summary for fiscal years 2015 through 2019 and concluded that, for these fiscal years, FEMA's percentage of distributions identified for recoupment was, on average, less than 1 percent — well below the DRRRA's 4 percent threshold.

Adoption of Alternate Approach

During our audit, we adopted an alternate approach to calculate the percentage of distributions made in error. As indicated, FEMA's data system does not capture IHP assistance data in a manner that allows us to accurately calculate a percentage of distributions made in error in any 12-month period. According to FEMA officials, covered assistance data is not stored within its system in a manner that allows analysis of the data on a monthly basis.

We met with OIG's Technology Audits and Analytics Support and FEMA officials to discuss the type, amount, and logistics of obtaining and reviewing information that would enable us to accurately calculate a percentage of distributions made in error. It became clear that the amount of data required to conduct the audit represents millions of rows of data as well as underlying supporting documents (e.g., applications, damage assessment reports,



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photographs, and inspectors' reports). According to FEMA, the data requested encompasses nearly 80 to 90 percent of the data in the National Emergency Management Information System and responding to the request might require paying contractors overtime to extract the data from its system. In addition, OIG would have to manually review large quantities of applicant documents supporting the data to answer our audit objective. These efforts require considerable resources for FEMA to provide, and OIG to review, the IHP information.

Facing these limitations, we adopted an alternate approach to estimate FEMA's percentage of distributions made in error. Specifically, using FEMA's IHP Recoupment Processing Executive Summary, i.e., amounts approved for IHP and identified for recoupment, we calculated the percentage of distributions made in error for fiscal years 2015 through 2019. Table 1 shows the results of our calculations.

Table 1. Estimated Rates of Distributions Made in Error, FYs 2015–2019

Error Rate Assuming All Debts are a Result of FEMA Error *					
FY	2015	2016	2017	2018	2019
Number of Applicants Approved for IHP	26,465	160,107	1,717,847	60,104	73,017
Number of IHP Debtors **	96	1,057	5,719	534	1,068
Amount Approved for IHP	\$125,451,786	\$1,181,662,416	\$4,345,370,427	\$262,083,936	\$429,288,144
Amount Identified for Recoupment	\$622,603	\$7,376,049	\$30,282,112	\$2,859,579	\$6,120,891
Estimated Rate of Distributions Made in Error ***	0.50%	0.62%	0.70%	1.09%	1.43%

Source: DHS OIG analysis of FEMA's IHP Recoupment Processing Executive Summary for FYs 2015 through 2019

* This approach assumes that all instances in which FEMA identified an amount for recoupment were payments made in error by the agency and, moreover, that FEMA had fully identified all such errors for possible recoupment.

** An IHP debtor is a recipient of IHP assistance who FEMA later identified for a recoupment action.

*** Dollar amount of debts identified for recoupment divided by amount approved for IHP.

For example, in FY 2019, FEMA approved \$429,288,144 in IHP assistance and identified \$6,120,891 for recoupment, yielding a 1.43 percent rate of error — the highest of the 5 fiscal years. For these 5 fiscal years, the average



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percentage of distributions identified for recoupment was 0.87 percent — well below the DRRA’s 4 percent threshold.⁸

Based on the data shown in Table 1, applying our professional judgment, we concluded that, for FYs 2015 through 2019, FEMA’s rate of distributions made in error did not exceed the 4 percent threshold specified in the DRRA. As a result, we are not making any recommendations.

Management Comments and OIG Analysis

FEMA concurred with OIG’s assessment of the distribution of IHP assistance and the finding that FEMA’s percent of distributions identified for recoupment were, on average, less than 1 percent. We included a copy of FEMA’s response in its entirety in Appendix A.

Objective, 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*.

Our objective was to determine whether covered assistance distributed in error by FEMA to individuals and households, in any 12-month period, exceeds 4 percent of the total amount of covered assistance distributed. In attempting to answer our objective, we reviewed Federal laws and regulations and FEMA policies and procedures to gain an understanding of the DRRA’s requirements and FEMA’s policies related to collecting and waiving debts. We also interviewed FEMA Individual Assistance Division, IHP, and FFC officials to understand FEMA’s methodology for identifying, tracking, and waiving debts related to covered assistance disbursed since October 28, 2012.

Additionally, we compared other legislative and directive definitions of “improper payment” and “based on an error” and discussed the meaning and intent of the DRRA with OIG Counsel. We also met with OIG’s Technology Audits and Analytics Support and FEMA officials and discussed the DRRA’s determination and monitoring requirements, our needs, and the availability of data to fulfill the DRRA mandate.

⁸ As of September 20, 2020, the FEMA Finance Center (FFC) issued 5,658 letters notifying applicants with outstanding IHP debt balances that they may be eligible to waive their debt upon request pursuant to the DRRA. Of the 5,658 letters, FFC received 93 requests for waivers totaling \$1,094,676 and approved 25 waivers totaling \$321,564.



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In December 2020, the audit team met with OIG senior management to explain the challenges encountered and inform them that, based on the information gathered, the likelihood of FEMA's rate of error exceeding 4 percent was low. As a result, OIG senior management agreed with the team's recommendation to curtail the audit. Consequently, we were unable to verify the accuracy of FEMA's IHP Recoupment Processing Executive Summary. However, we did gain a general understanding of the underlying IHP controls through discussions with FEMA officials and analysis of its written IHP processing controls, and for purposes of our review, we accepted the amounts as reported by FEMA as sufficiently reliable to calculate its rates of error for FYs 2015 through 2019.

We conducted this review between June and December 2020, pursuant to 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 Audits major contributors to this report are Brooke Bebow, Director; David B. Fox, Audit Manager; Rickey "Lynn" Smith, Auditor-in-Charge; Renee Gradin, Auditor (Ret.); Michael McGee, Program Analyst; Tai Cheung, Program Analyst; Jamie Clark, Independent Reference Reviewer; and Kelly Herberger, Supervisory Communications Analyst.



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Appendix A
FEMA Comments to the Draft Report

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



FEMA

March 16, 2022

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.
Inspector General

FROM: Cynthia Spishak
Associate Administrator
Office of Policy and Program Analysis

SUBJECT: Management Response to Draft Report: "IHP DRRA Debt
Waiver"
(Project No. OIG-20-036)

CYNTHIA
SPISHAK

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Thank you for the opportunity to comment on this draft report. The Federal Emergency Management Agency (FEMA) appreciates the work of the Office of Inspector General (OIG) in planning, conducting its review and issuing this report.

FEMA is pleased to note the OIG's positive recognition of the accuracy with which FEMA has distributed Individuals and Households Program (IHP) assistance, as well as the reliability of FEMA's IHP Recoupment Processing Executive Summary. FEMA concurs with the OIG's assessment of this audit and the finding that FEMA's percentage of distributions identified for recoupment was, on average, less than 1 percent (which is well below the 4 percent error rate threshold established within Section 1216 of the Disaster Recovery Reform Act of 2018 (DRRA)).

FEMA welcomes OIG's efforts to clarify the stipulations set forth within the DRRA mandate to indefinitely monitor the accuracy of FEMA's distribution of covered assistance, and FEMA looks forward to learning those results.

The draft report contained no recommendations. FEMA previously sent technical comments under a separate cover for OIG's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.



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