



Testimony

Before the Subcommittee on Oversight
and Management Efficiency, Committee
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Representatives

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FEDERAL EMERGENCY MANAGEMENT AGENCY

Additional Actions Needed to Improve Handling of Employee Misconduct Allegations

Statement of Chris P. Currie, Director, Homeland Security
and Justice

Chairman Perry, Ranking Member Correa, and Members of the Subcommittee:

I am pleased to be here today to discuss our recent report on employee misconduct at the Federal Emergency Management Agency (FEMA). FEMA is responsible for coordinating government-wide efforts in preparing for, protecting against, mitigating the effects of, responding to, and recovering from all domestic natural or man-made disasters, including acts of terror. To accomplish this mission, the agency relies on a total workforce of more than 22,000 permanent and disaster-related temporary employees.¹ These employees play a key role in supporting communities and first responders. However, incidents of misconduct can detract from FEMA's mission, damage the agency's reputation, and hamper the agency's ability to respond to disasters and maintain public trust if not effectively managed.

Within FEMA, three primary offices are involved in reviewing, investigating, and adjudicating employee misconduct allegations.²

- **Office of the Chief Security Officer (OCSO) Internal Investigations Branch:** conducts investigations related to more serious allegations, such as those that may involve potential criminal misconduct.
- **The Office of the Chief Component Human Capital Officer Labor and Employee Relations Branch (LER):** advises supervisors who conduct lower level investigations and inquiries, such as time and attendance violations, and provides recommendations on any counseling or any disciplinary or adverse action for all cases.
- **The Office of the Chief Counsel Personnel Law Branch (PLB):** provides legal advice during investigations and conducts legal reviews of certain reports of investigation and all disciplinary and adverse actions.³

¹FEMA's combined workforce includes permanent and disaster response employees, as well as individuals from two newer personnel groups – the Department of Homeland Security (DHS) Surge Capacity Force and FEMA Corps – who are not FEMA employees, but who are included in FEMA's workforce categories for the purposes of our review.

²FEMA's Office of Equal Rights may also be involved in certain cases involving allegations of discrimination.

³According to PLB officials, PLB does not review Reservist disciplinary actions or terminations unless requested to do so.

Representatives from these three offices form FEMA's Administrative Investigations Directive (AID) Committee, which reviews misconduct allegations, assigns investigators, and tracks the status of open cases. The Department of Homeland Security (DHS) Office of Inspector General (OIG) also plays a role in reviewing and investigating certain misconduct allegations, such as allegations of criminal misconduct against a DHS employee and any allegations of misconduct against senior employees.⁴

My testimony discusses findings from our July 2017 report on the handling of employee misconduct allegations at FEMA.⁵ Accordingly, my testimony addresses: (1) the extent to which FEMA has developed policies and procedures for addressing employee misconduct; (2) available data on FEMA employee misconduct cases and their outcomes and the extent to which FEMA uses these data to identify and address trends; and (3) the extent that information regarding misconduct cases is shared within FEMA's personnel management offices and with DHS OIG.

To conduct this work, among other things, we reviewed, where available, FEMA's documented policies and procedures for reporting, investigating, and adjudicating allegations of misconduct across all of the agency's workforce categories, including the following: Title 5 employees,⁶ Cadre of On-Call Response/Recovery Employees (CORE), Reservists, Surge Capacity Force members, and FEMA Corps members.⁷ We also interviewed officials from FEMA units with responsibilities related to managing misconduct and analyzed available FEMA data on employee misconduct. Specifically, we reviewed and analyzed available 2014 through 2016 data contained in three misconduct case tracking spreadsheets maintained by FEMA's OCSO, LER, and PLB. Our July

⁴Senior employees include those at the GS-15 level or higher.

⁵GAO, *Federal Emergency Management Agency: Additional Actions Needed to Improve Handling of Employee Misconduct Allegations*, [GAO-17-613](#) (Washington, D.C.: July 18, 2017).

⁶Generally, Title 5 refers to the section of United States Code that establishes the law for managing human resources in the federal government. Title 5 employees can be hired on a permanent or temporary, full- or part-time basis. Over 90 percent of FEMA's Title 5 workforce is permanent full-time.

⁷Workforce categories are defined as: Title 5 (generally permanent employees), CORE (temporary employees who support disaster-related activities), Reservist (intermittent disaster employees), Surge Capacity Force (employees of other DHS components who may augment FEMA's workforce in the event of a catastrophic disaster), and FEMA Corps (a national service program managed by AmeriCorps National Civilian Community Corps).

2017 report includes a detailed explanation of the scope and methods used to conduct our work, which was performed in accordance with generally accepted government auditing standards.

FEMA Has Developed and Documented Misconduct Policies and Procedures for Most Employees, but Not its Entire Workforce

FEMA has developed a policy and procedures regarding misconduct investigations that apply to all FEMA personnel and has also documented policies and procedures regarding options to address misconduct and appeal rights for Title 5 and CORE employees. However, FEMA has not documented complete misconduct policies and procedures for Surge Capacity Force members or Reservists.

DHS issued the *Surge Capacity Force Concept of Operations* in 2010, which outlines FEMA's base implementation plan for the Surge Capacity Force.⁸ However, the document does not address any elements pertaining to Surge Capacity Force human capital management, specifically misconduct and disciplinary policies and procedures. According to the FEMA Surge Capacity Force Coordinator, despite the lack of documentation, any incidents of misconduct would likely be investigated by FEMA's OCSO, which would then refer the completed report of investigation to the employee's home component for adjudication and potential disciplinary action. However, although no allegations of misconduct were made at the time, the Federal Coordinating Officer in charge of one of the Hurricane Sandy Joint Field Offices said he had not seen anything in writing or any formal guidance that documents or explains how the process would work and stated that he would have had to contact FEMA headquarters for assistance in determining how to address any misconduct.⁹

Without documented guidance, FEMA cannot ensure that Surge Capacity Force misconduct is addressed adequately in a timely and comprehensive manner. Therefore, in our July 2017 report we recommended that the FEMA Administrator document policies and procedures to address potential Surge Capacity Force misconduct. DHS concurred and stated that FEMA is developing a Human Capital plan for the Surge Capacity Force and will include policies and procedures

⁸See 6 U.S.C. § 711(a) (requiring the FEMA Administrator to prepare a plan to establish and implement the Surge Capacity Force).

⁹Joint field offices are federal multiagency centers which are established locally in order to coordinate the response to domestic incidents, such as terrorist attacks, major disasters, or other emergencies.

relating to potential misconduct. DHS estimated that this effort would be completed by June 30, 2018. This action, if fully implemented, should address the intent of the recommendation.

Additionally, we found that FEMA's *Reservist Program Manual* lacks documented policies and procedures on disciplinary options to address misconduct and appeal rights for Reservists.¹⁰ Both LER and PLB officials told us that, in practice, disciplinary actions for Reservists are limited to reprimands and termination. According to these officials, FEMA does not suspend Reservists because they are an intermittent, at-will workforce deployed as needed to respond to disasters. Federal Coordinating Officers and cadre managers have the authority to demobilize Reservists and remove them from a Joint Field Office if misconduct occurs, which may be done in lieu of suspension. Furthermore, LER and PLB officials also told us that, in practice, FEMA grants Reservists the right to appeal a reprimand or termination to their second-level supervisor. However, these actions are not documented in the *Reservist Program Manual*.

Without documented Reservist disciplinary options and appeals policies, supervisors and Reservist employees may not be aware of all aspects of the disciplinary and appeals process. Thus, in our July 2017 report, we recommended that FEMA document Reservist disciplinary options and appeals that are currently in practice at the agency. DHS concurred and stated that FEMA will update its Reservist program directive to include procedures for disciplinary actions and appeals currently in practice at the agency. DHS estimated that this effort would be completed by December 31, 2017. This action, if fully implemented, should address the intent of the recommendation.

We also reported in our July 2017 report that FEMA does not communicate the range of offenses and penalties to its entire workforce. Namely, FEMA revised its employee disciplinary manual for Title 5 employees in 2015, and in doing so, eliminated the agency's table of offenses and penalties. Tables of offenses and penalties are used by agencies to provide guidance on the range of penalties available when formal discipline is taken. They also provide awareness and inform employees of the penalties which may be imposed for misconduct. Since revising the manual and removing the table, FEMA no longer

¹⁰Federal Emergency Management Agency, *FEMA Reservist Program FD 010-6 Revision Number: 02* (Jan. 25, 2017).

communicates possible punishable offenses to its entire workforce. Instead, information is now communicated to supervisors and employees on an individual basis. Specifically, LER specialists currently use a “comparators” spreadsheet with historical data on previous misconduct cases to determine a range of disciplinary or adverse actions for each specific misconduct case. The information used to determine the range of penalties is shared with the supervisor on a case-by-case basis; however, LER specialists noted that due to privacy protections they are the only FEMA officials who have access to the comparators spreadsheet.¹¹

Because information about offenses and penalties is not universally shared with supervisors and employees, FEMA management is limited in its ability to set expectations about appropriate conduct in the workplace and to communicate consequences of inappropriate conduct. We recommended that FEMA communicate the range of penalties for specific misconduct offenses to all employees and supervisors. DHS concurred and stated that FEMA is currently drafting a table of offenses and penalties and will take steps to communicate those penalties to employees throughout the agency once the table is finalized. DHS estimated that this effort would be completed by December 31, 2017. This action, if fully implemented, should address the intent of the recommendation.

FEMA Records Data on Employee Misconduct Cases and Their Outcomes, but Could Improve the Quality and Usefulness of These Data to Identify and Address Trends

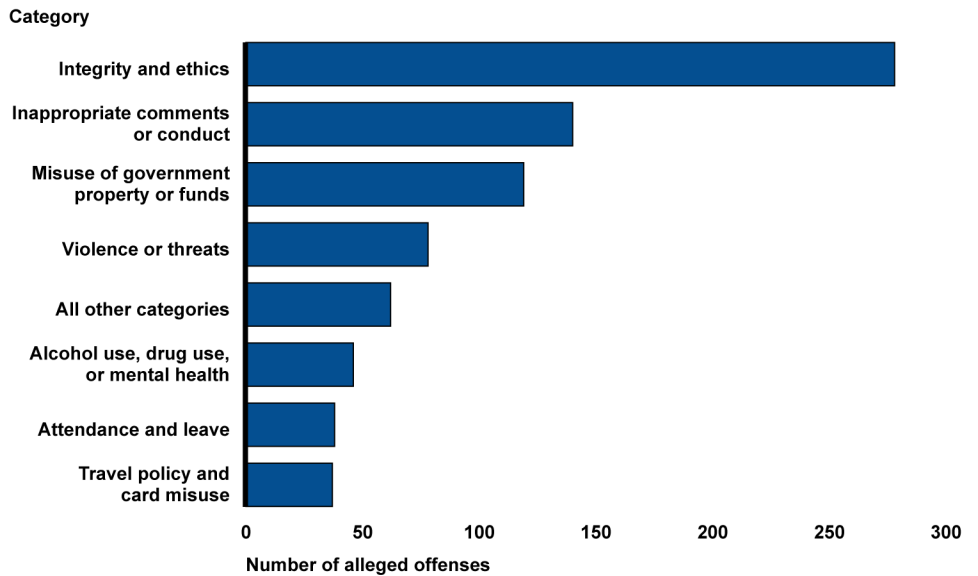
¹¹The comparators spreadsheet contains personally identifiable information about specific cases, such as subject names. According to LER and PLB officials, this information is subject to privacy protections.

Multiple FEMA Offices
Collect Misconduct Data;
FEMA OCSO Recorded
Approximately 600
Misconduct Complaints
from January 2014
through September 30,
2016

The three offices on the AID Committee involved in investigating and adjudicating employee misconduct complaints each maintain separate case tracking spreadsheets with data on employee misconduct to facilitate their respective roles in the misconduct review process. We analyzed data provided by OCSO in its case tracking spreadsheet and found that there were 595 complaints from January 2014 through September 30, 2016. The complaints involved alleged offenses of employee misconduct which may or may not have been substantiated over the course of an investigation.

Based on our analysis, the 595 complaints contained approximately 799 alleged offenses from January 2014 through September 30, 2016. As shown in figure 1 below, the most common type of alleged offenses were integrity and ethics violations (278), inappropriate comments and conduct (140), and misuse of government property or funds (119). For example, one complaint categorized as integrity and ethics involved allegations that a FEMA employee at a Joint Field Office was accepting illegal gifts from a FEMA contractor and a state contractor. Another complaint categorized as inappropriate comments and conduct involved allegations that a FEMA employee's supervisor and other employees had bullied and cursed at them, creating an unhealthy work environment. Finally, a complaint categorized as misuse of government property or funds involved allegations that a former FEMA employee was terminated but did not return a FEMA-owned laptop.

Figure 1: Alleged FEMA Employee Misconduct Offenses Reported to OCSO by Category: January 2014 through September 30, 2016



Source: GAO analysis of FEMA Office of the Chief Security Officer (OCSO) data. | GAO-17-758T

Note: According to agency officials, lower-level alleged offenses, such as being absent without leave, are typically addressed by the Labor and Employee Relations Branch and may not be included in the OCSO data we reviewed.

Aspects of FEMA’s Data Limit Their Usefulness for Identifying and Addressing Trends in Employee Misconduct

OCSO, LER, and PLB collect data on employee misconduct and outcomes, but limited standardization of fields and entries within fields, limited use of unique case identifiers, and a lack of documented guidance on data entry restricts their usefulness for identifying and addressing trends in employee misconduct. FEMA employee misconduct data are not readily accessible and cannot be verified as accurate and complete on a timely basis. These limitations restrict management’s ability to process the data into quality information that can be used to identify and address trends in employee misconduct. For example, an OCSO official stated that senior OCSO officials recently requested employee misconduct information based on employee type, such as the number of Reservists. However, the data are largely captured in narrative fields, making it difficult to extract without manual review.

In our July 2017 report we recommended that FEMA improve the quality and usefulness of the misconduct data it collects by implementing quality control measures, such as adding additional drop-down fields with standardized entries, adding unique case identifier fields, developing

documented guidance for data entry, or considering the adoption of database software. In addition, we recommended that FEMA conduct routine reporting on employee misconduct trends once the quality of the data is improved. DHS concurred and stated that FEMA is working with the DHS OIG to develop a new case management system. The system will use drop-down fields with standardized entries and provide tools for trend analysis. Once the new system is implemented, DHS stated that FEMA will be able to routinely identify and address emerging trends of misconduct. DHS estimated that these efforts would be completed by March 31, 2018. These actions, if fully implemented, should address the intent of the recommendations.

FEMA Shares Misconduct Case Information Internally and with DHS OIG, but Does Not Accurately Track DHS OIG Referred Misconduct Complaints

FEMA Offices Meet Regularly to Discuss Misconduct Allegations and Ongoing Investigations and Send Monthly Status Updates to DHS OIG

Officials from OCSO, LER, and PLB conduct weekly AID Committee meetings to coordinate information on misconduct allegations and investigations. The committee reviews allegations, refers cases for investigation or inquiry, and discusses the status of investigations. In addition to the weekly AID Committee meetings, LER and PLB officials stated that they meet on a regular basis to discuss disciplinary and adverse actions and ensure that any penalties are consistent and defensible in court. Employee misconduct information is also shared directly with FEMA's Chief Security Officer and Chief Counsel. Within FEMA, these regular meetings and status reports provide officials from key personnel management offices opportunities to communicate and share information about employee misconduct. FEMA also provides DHS OIG with information on employee misconduct cases on a regular basis through monthly reports on open investigations.

FEMA's Procedures for Tracking DHS OIG Referred Cases Need Improvement

We found that OCSO has not established effective procedures to ensure that all cases referred to FEMA by DHS OIG are accounted for and subsequently reviewed and addressed. As discussed earlier, OCSO sends a monthly report of open investigations to DHS OIG. However, while these reports provide awareness of specific investigations, according to OCSO officials, neither office reconciles the reports to a list of referred cases to ensure that all cases are addressed. We reviewed a non-generalizable random sample of 20 fiscal year 2016 employee misconduct complaints DHS OIG referred to FEMA for review and found that FEMA missed 6 of the 20 complaints during the referral process and had not reviewed them at the time of our inquiry. As a result of our review, FEMA subsequently took action to review the complaints. The AID Committee recommended that OCSO open inquiries in 3 of the 6 cases to determine whether the allegations were against FEMA employees, assigned 2 cases to LER for further review, and closed 1 case for lack of information. According to an OCSO official, OCSO subsequently determined that none of the allegations in the 3 cases they opened involved FEMA employees and the cases were closed. The remaining 2 cases were open as of April 2017.

The results from our sample cannot be generalized to the entire population of referrals from DHS OIG to FEMA; however, they raise questions as to whether there could be additional instances of misconduct complaints that FEMA has not reviewed or addressed. Therefore, in our July 2017 report we recommended that FEMA develop reconciliation procedures to consistently track referred cases. DHS concurred and stated that once the new case management system described above is established and fully operational, FEMA will be able to upload all DHS OIG referrals into a single, agency-wide database. Additionally, FEMA will work with DHS OIG to establish processes and procedures that will improve reconciliation of case data. DHS estimated that these efforts would be completed by March 31, 2018. These actions, if fully implemented, should address the intent of the recommendation.

Chairman Perry, Ranking Member Correa, Members of the Subcommittee, this concludes my prepared testimony. I would be pleased to answer any questions that you may have at this time.

GAO Contact and Staff Acknowledgments

If you or your staff members have any questions concerning this testimony, please contact me at 404-679-1875 or CurrieC@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Other individuals who made key contributions to this testimony include Sarah Turpin, Kristiana Moore, Steven Komadina, and Ben Atwater.

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