

STATEMENT

OF

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BEFORE

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U.S. HOUSE OF REPRESENTATIVES
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“EMPLOYEE MISCONDUCT: HOW CAN FEMA IMPROVE THE INTEGRITY OF ITS
WORKFORCE?”

Submitted

By

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Introduction

Good Morning, Chairman Perry, Ranking Member Correa, and members of the Committee. I am David Grant, Acting Deputy Administrator of the U.S. Department of Homeland Security's (DHS) Federal Emergency Management Agency (FEMA). Thank you for this opportunity to meet with you today to discuss ways in which FEMA is improving its disciplinary and misconduct policies and procedures.

From June 2016 through July 2017, the Government Accountability Office (GAO) conducted a performance audit of FEMA's process for handling allegations of employee misconduct. GAO reviewed FEMA's misconduct policies and procedures, data on misconduct cases, and the extent to which FEMA shares misconduct data with the DHS Office of Inspector General (DHS OIG).

The GAO report recognized how FEMA already has effective and efficient misconduct policies and procedures applicable to employees hired under Title 5 of the U.S. Code (covering traditional federal civilian employees) and employees hired through the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). FEMA records data regarding misconduct cases and outcomes to ensure timely adjudication of misconduct cases, verify misconduct cases are treated in a similar and equitable manner, and for auditing purposes. Finally, there is already a process for FEMA to share misconduct data with DHS OIG.

GAO has not finalized the report; however, the report contains the following recommendations to enhance efficiency: misconduct policies regarding Surge Capacity Force (SCF) personnel should be documented; additional guidance on the disciplinary and appeal process for Reservists should be provided; the range of penalties associated with specific acts of misconduct should be communicated; the quality and consistency of misconduct data should be improved; and FEMA should study misconduct data to identify any patterns or trends for further action.

In my testimony today, I will discuss how FEMA is working to improve its misconduct process. FEMA is taking active steps to formalize the misconduct process for SCF employees, provide additional guidance on how Reservist misconduct is reviewed and addressed, and improve the quality of data associated with misconduct cases.

FEMA's Disaster Workforce

In assessing FEMA's process for handling misconduct, it is helpful and important to recognize and understand the unique features of FEMA's workforce. Most federal, civilian employees are hired under authorities set forth in Title 5 of the United States Code, which are standard for most of the federal government. As a consequence and feature of the special needs and circumstances of FEMA's emergency management mission, however, FEMA utilizes authorities and arrangements beyond those in Title 5. To effectively and efficiently respond to disasters, FEMA augments its permanent Title 5 workforce by appointing temporary employees through the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). FEMA has also partnered with the National Civilian Community Corps (NCCC) to create FEMA Corps, a dedicated volunteer unit of AmeriCorps that supports FEMA's mission. In addition, in response to particularly catastrophic events, FEMA may activate the Surge Capacity Force, comprising

specially designated, non-FEMA, Department of Homeland Security personnel, to reinforce FEMA personnel in support of Stafford Act functions when necessary.

The Stafford Act grants FEMA the authority “to appoint and fix the compensation of such temporary personnel as may be necessary, without regard to the provisions of Title 5, United States Code, and governing appointments in the competitive service.” FEMA uses this Stafford Act appointing authority to hire Reservists, who are intermittent employees serving under two year appointments. Reservists are activated and deployed in support of disasters as response and recovery needs require. When not activated or deployed, Reservists remain in a non-duty/non-pay status allowing FEMA to field sufficient disaster personnel in a cost effective manner.

In 2012, FEMA partnered with the Corporation for National and Community Service (CNCS) to strengthen the nation’s disaster response capacity by establishing a FEMA-devoted unit of 1,600 service corps members, within the AmeriCorps National Civilian Community Corps, to aid in disaster preparedness, response, and recovery activities. Upon completion of an initial orientation by NCCC and FEMA, FEMA Corps members are deployed to help individuals, families, and communities recover following the initial impact of a disaster. Projects include working directly with disaster survivors, providing support to disaster recovery centers, and sharing valuable disaster readiness and mitigation information with the public.

The Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) requires the Secretary of Homeland Security to establish a Surge Capacity Force of Department of Homeland Security employees, who are not FEMA employees, and employees of other federal agencies that could deploy in response to natural disasters, acts of terrorism, and other man-made disasters. DHS headquarters and its components, as well as other partnering federal agencies, designate employees to serve on the SCF and ensure such employees are ready to deploy within 48 hours of a warning, alert, or no-notice activation.

In very rare circumstances, a disaster of extraordinary size may require the DHS Secretary to activate the SCF. During a declared disaster, the DHS Secretary will determine if SCF support is necessary. If the SCF is required, the Secretary will then authorize FEMA to task and deploy SCF personnel from DHS components and other federal agencies to support disaster operations. The SCF was successfully activated by former DHS Secretary Janet Napolitano, at the request of former FEMA Administrator Craig Fugate in response to Hurricane Sandy. Approximately 1,150 SCF personnel were activated to assist FEMA’s disaster response efforts, providing critical support to Individual Assistance, Disaster Survivor Assistance, and Logistics mission areas.

Disciplinary Process for Disaster Personnel

The vast majority of FEMA’s disaster personnel effectively and honorably serve the nation providing critical assistance to communities, first responders, and disaster survivors to respond to and recover from disasters and emergencies. In rare instances when a FEMA employee, or an individual representing FEMA, is accused of misconduct, FEMA takes immediate action to address the allegations.

Using the authority granted by the Stafford Act, FEMA created unique policies and procedures for taking disciplinary actions against Reservists to meet FEMA's mission requirements. The Stafford Act affords FEMA the latitude to devise a disciplinary process outside of the requirements of Title 5. The process in place allows for disciplinary cases to be quickly initiated, reviewed, and finalized. FEMA employs an internal appeals process for Reservist disciplinary cases to confirm appropriate action is taken in response to acts of misconduct. The process ensures Reservists are subject to a fair and equitable disciplinary process, while minimizing the impact of the disciplinary process on disaster operations.

While FEMA does not have written policies and procedures specifically for guiding misconduct investigations involving SCF personnel, if such cases arise, the Office of Chief Counsel, the Office of the Chief Component Human Capital Officer, and the Office of the Chief Security Officer are empowered to take necessary actions to address misconduct and would follow FEMA's existing policies and procedures for conducting misconduct investigations that apply to FEMA personnel. With regard to taking disciplinary action against SCF personnel as a result of misconduct investigations, it is important to note that SCF personnel are not FEMA employees. FEMA does not have the authority to take disciplinary actions regarding these individuals because SCF personnel remain officially employed by their sponsoring organization (e.g., DHS headquarters, component, other federal agency) while engaging in activities on FEMA's behalf. The sponsoring organization would be responsible for effecting any appropriate disciplinary action against its SCF personnel.

Development of FEMA's Misconduct Policy

Over the past several years, FEMA made significant strides in documenting and improving the disciplinary and misconduct policies and procedures.

Prior to 2012, FEMA did not have written or established policies or procedures on how to conduct employee misconduct investigations. Although FEMA had a process for imposing disciplinary action, FEMA did not have a uniform process for investigating the facts surrounding a misconduct allegation to determine whether disciplinary action was warranted. Rather, the Office of the Chief Component Human Capital Officer (OCCHCO) Labor and Employee Relations Branch conducted ad hoc investigations to clarify the factual circumstances associated with a misconduct allegation. On some occasions, the Office of the Chief Security Officer (OCSO) would assist OCCHCO to gather necessary witness statements. Alternatively, an attorney with the Office of Chief Counsel (OCC) General Law Division would investigate a misconduct allegation in the process of reviewing a disciplinary action.

In 2012, OCC, OCCHCO, and OCSO collaborated in creating FEMA Directive 123-19, Administrative Investigations Policy (Administrative Investigations Directive), and an accompanying manual, FEMA Manual 123-19-1, Administrative Investigations (Administrative Investigations Manual), establishing a process for the three offices to receive complaints of employee misconduct, send complaints to the DHS Office of Inspector General as required by DHS policy, and direct misconduct investigations within FEMA. The Administrative Investigations Directive and Manual require the three offices to meet weekly and review all known complaints to ensure complaints are properly investigated. The Administrative

Investigations Directive and Manual also institute a formalized process for appointing investigators and finalizing investigative reports, which are reviewed by the OCCHCO Labor and Employee Relations Branch for potential disciplinary action.

In practice, if there are misconduct allegations against SCF personnel, the misconduct investigation process would follow the current investigations process for FEMA employees. FEMA would notify the parent organization of the allegation. Simultaneously, depending on the nature and credibility of the allegation, the SCF personnel may be demobilized and returned to their employing agency. Any additional information gathered through the investigations process would be provided to the employing agency for that agency's consideration in its determination of what action to take.

Currently, the Administrative Investigations Directive and Manual are undergoing a periodic review and update as mandated by FEMA policy. The updated version of the directive and manual will streamline some of the processes and are expected to be finalized and signed in 2017.

GAO Recommendations

Although FEMA has an effective misconduct process in place for Title 5 and Stafford Act employees, GAO has recommended that FEMA take additional steps to clarify the process and improve data associated with misconduct cases. The GAO report makes several recommendations to improve managing misconduct. FEMA agrees with those recommendations, and has already initiated several lines of effort that will address GAO's concerns when fully implemented.

Recommendation 1: Document policies and procedures to address potential Surge Capacity Force misconduct.

Proper documentation of the misconduct process for SCF personnel helps to ensure a consistent and reliable investigation process. Although FEMA would apply its existing administrative investigation procedures to allegations against SCF personnel, the FEMA policies governing those procedures do not specifically state that they apply to investigations of SCF personnel. Ensuring that application of the existing administrative investigation procedures to SCF personnel is spelled out clearly, in writing, will help eliminate any potential confusion. DHS charged FEMA with developing a human capital plan for the SCF to address this issue and other human capital related aspects of deploying the SCF.

Recommendation 2: Document Reservist misconduct policies and procedures, to include disciplinary actions and appeals currently in practice at FEMA.

FEMA is committed to providing employees subject to allegations of misconduct a fair and equitable process for addressing such allegations. FEMA already applies a consistent process for reviewing misconduct allegations involving Reservists and taking appropriate disciplinary actions, but FEMA can do more to make employees aware of the process. To address employee

perceptions, FEMA will issue additional guidance regarding the disciplinary process for Reservists.

Recommendation 3: Communicate the range of penalties for specific misconduct offenses to all employees and supervisors.

FEMA is committed to communicating with employees and providing guidance on the disciplinary process, while ensuring FEMA complies with applicable privacy laws and regulations. Such information will increase the perception among supervisors and employees that the disciplinary process results in fair and equitable decisions. FEMA's Office of the Chief Component Human Capital Officer drafted a Table of Penalties, which is undergoing agency review. FEMA anticipates the new Table of Penalties will be approved and finalized in the near future.

Recommendation 4: 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.

The Office of the Chief Component Human Capital Officer, the Office of Chief Counsel, and the Office of the Chief Security Officer are working together to provide consistent and accurate misconduct data. FEMA is working on securing funding to purchase a case management system that supports FEMA's misconduct process. Until sufficient funding can be secured, FEMA is modifying its existing tracking tools to include drop-down fields in order to provide standardized data entries and include a column to cross reference any case referred to DHS OIG, received from the DHS OIG, or investigated by OCSO.

Recommendation 5: Once the quality of data is improved, conduct routine reporting on employee misconduct trends.

Stakeholders managing the disciplinary and misconduct processes are constantly seeking ways to improve the investigation process, identify misconduct trends for strategic remediation, and ensure consistent and fair results. FEMA already provides trend analysis to program areas upon request; however, FEMA is currently seeking to acquire a system that enables additional analytic capabilities. Analyzing misconduct data will allow FEMA to identify and address emerging trends of misconduct through targeted training to promote integrity within the workforce.

Recommendation 6: Develop reconciliation procedures to consistently track referred cases

FEMA is working with the DHS OIG to establish processes and procedures that will improve reconciliation of case data. FEMA is also working on the feasibility of using the same cases management system used by the DHS OIG. This would allow for a seamless flow of case information between the two agencies. A case management system will help in this endeavor. Until then, more care will be taken to reconcile cases manually.

Conclusion

FEMA is committed to providing effective support to our citizens and first responders during disasters and emergencies. That commitment includes a commitment to investigate allegations of misconduct and appropriately hold individuals accountable. FEMA currently has an effective misconduct and disciplinary process and routinely looks for ways to improve that process. FEMA appreciates GAO's assistance and recommendations in this regard and will take appropriate action to address the concerns they identify in their final report. Again, thank you for allowing me to testify, and I am happy to answer any questions the Committee may have.