

Public Assistance Division

SOP9570.16

Public Assistance Recovery of Improper Payments
Standard Operating Procedures

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FEMA

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**PA Recovery of Improper Payments
Standard Operating Procedure**



FEMA

**Federal Emergency Management Agency
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REFERENCES

- Improper Payment Information Act (IPIA)**
- Improper Payment Elimination and Recovery Act (IPERA)**



1.0 Public Assistance Mission Statement

The mission of the Public Assistance (PA) Program is to assist communities in recovering from the devastating effects of disasters by providing technical assistance and financial grants in an efficient, effective, consistent, and customer-friendly manner. The Federal Emergency Management Agency (FEMA) will accomplish the mission by having experienced, trained, knowledgeable, and friendly staff; well-documented, easy-to-understand, and accessible policies and procedures; timely and transparent decision-making; and a strong partnership with the States. FEMA will continuously seek and identify opportunities to improve program delivery.

2.0 Background

The *Improper Payments Information Act of 2002* (IPIA) and the Office of Management and Budget's (OMB) implementing guidance, Memoranda M-03-132, and OMB Circular A-136, require Federal agencies to annually review all programs and activities to identify those that are “high risk” or susceptible to “significant improper payments.” The *Improper Payments Elimination and Recovery Act of 2010* (IPERA), signed on July 22, 2010, amended the IPIA to require agencies to increase their diligence in reducing improper payments. IPERA defines high-risk programs as having estimated error amounts above \$10 million with an error rate above 2.5% or having an estimated error amount above \$100 million (at any error rate). For each program identified as susceptible, Federal agencies are required to report the annual amount of estimated improper payments, along with steps taken and actions planned to reduce them, to the President and the Congress.

In keeping in compliance, the Office of the Chief Financial Officer (OCFO) will complete assessment audits by taking samples of PA Program disbursements from designated Regions on an annual basis.

3.0 Purpose

The purpose of this Standard Operating Procedure (SOP) is to provide guidance to the FEMA PA Program on the responsibilities and procedures for the recovery of payments identified as improper under IPIA and IPERA audit findings. FEMA is actively taking steps to prevent the loss of taxpayer dollars following a disaster by closely monitoring the de-obligation of grant funding that is deemed improper. The IPIA/IPERA assessments target high-risk transactions of the PA Program, which include high-dollar volume FEMA Regions and high-dollar SMARTLINK draw-downs. SMARTLINK is the system FEMA uses to transfer grant funds to



grantees from its account with the U.S. Treasury. This SOP provides consistent guidance to Regions in facilitating recovery of these high-dollar amounts.

4.0 Scope

The scope of this SOP is limited to Public Assistance procedures for recovering improper payments based on IPIA and IPERA audit findings. IPIA/ IPERA audits are only one method used to capture and reconcile improper funding.

This SOP provides procedures on the following:

- Notifying the Grantee of final audit findings, including consultation procedures between representative parties and the subgrantee's right to appeal;
- De-obligation remedies available to resolve corrective actions;
- Steps to recover unreturned grant funding; and
- Time limitations on collecting outstanding debt.

5.0 Definitions

FEMA Finance Center: A component of the Office of Chief Financial Officer that is responsible for financially closing reconciled PA grants.

Final expenditure report: The report the Grantee submits to FEMA for all of a subgrantee's projects, certifying that the grant terms and conditions have been met and project costs are reconciled.

Grant Closeout: The status of a grant for which FEMA has determined that the Grantee and subgrantee(s) have completed all required grant work and FEMA has completed all applicable administrative actions related to the PA Program.

Improper Payment: Any payment that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative or other legally applicable requirements. An improper payment includes any payment to an ineligible recipient, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received, and any payment that does not account for credit for applicable discounts.

Payment: Any transfer, or commitment for future transfer, of Federal funds such as cash, securities, loans, loan guarantees, and insurance subsidies to any non-Federal person or entity, that is made by a Federal agency, a Federal contractor, a Federal grantee, or a governmental or other organization administering a Federal program or activity.



Recovery of Improper Payment: FEMA's collection of a payment under the PA Program that was found ineligible or was made in an incorrect amount.

Subgrant Closeout: The status of a subgrant for which FEMA has determined that the Grantee and the subgrantee have certified that all projects (large and small) are 100 percent complete, and that the Grantee has performed a final reconciliation on large projects.

6.0 Final IPIA/IPERA Audit Findings

Assessment/audit testing in accordance with IPIA, IPERA, and OMB is performed by the OCFO assessor, in cooperation with the PA Program in the Region and the Grantee. The process for issuing the audit findings and taking actions in response is as follows:

After the OCFO and the PA Program determine the assessment findings of improper payments, the OCFO will also send to FEMA Regions a document identifying the entire list of improper payments based on the IPIA/IPERA audit findings.

1. **Issuance of Final Findings.** Once IPIA assessment/audit testing has been completed, the OCFO makes a final audit finding decision in accordance with the IPIA and IPERA assessment findings and issues a Notice of Potential Debt letter with supporting documentation. The OCFO will address the letter to the FEMA Region (**see Appendix A**). This letter articulates the 1) basis for the audit finding; 2) the amount of improper funding that must be recovered, and 3) will provide the Grantee 60 -days from the Grantee's receipt of the letter to comply with the findings. Compliance constitutes repayment of the improper payment(s).
2. **Notification and Coordination.** Upon receipt of the Finding letter from the OCFO, the Regional PA Program will review the finding's monetary amount in question with the Regional Administrator (RA). PA HQ and the OCFO assessor will be available as a point of contact. PA HQ serves as the POC and coordinator between the OCFO and the Regional PA representatives. The OCFO assessor serves as the coordinator between PA HQ and the OCFO contractors for the IPIA assessment.

FEMA PA regional staff will hold an assessment exit briefing with the Grantee. The primary purpose of the assessment exit briefing is to ensure that the Grantee is aware of the correct dollar figure that must be placed into the SMARTLINK account, which FEMA will



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then withdraw in accordance with the de-obligation process. The FEMA Regional PA Offices should rely on the Grantees to notify the subgrantees to provide the amount owed.

FEMA PA and the Grantee will then attend a coordination call or meeting to discuss the findings. This meeting is designed to ensure that all parties are aware of the findings identified in the IPIA and IPERA assessment and the corrective actions that are required.

3. **Analysis and Review.** Grantees and subgrantees will have up to **30 days from the date** of the Grantee's receipt of the OCFO Findings letter to either take corrective action or to provide any documentation disputing the findings in question.
4. **Right to Appeal.** If the Grantee and subgrantee dispute any or all of the finding(s), the Grantee and Subgrantee will have the right to appeal in accordance with Section 423 of the Stafford Act, *Appeals of Assistance Decisions*. Section 423 authorizes Grantees or Subgrantees the right to appeal "[any decision regarding eligibility for, from, or amount of assistance under this title ...]" The finding(s) in this matter may be appealed within 30 days after the date on which the Grantee is notified by the OCFO. FEMA will follow the procedures for appeals in accordance with 44 CFR § 206.206.
5. **Exhaustion of Appeal Rights.** Once the Grantee and subgrantee have exhausted all rights to appeals, if they still dispute the monetary amount found improper, FEMA PA has the authority to perform the following actions: 1) move forward with corrective actions discussed in Section 7.0 and recover the improper payment in question. Once informal remedies are exhausted, 2) refer to the outstanding amount to the Central Depository for formal collection.

7.0 Recovery of Improper Payments: Corrective Actions

The FEMA PA Region will de-obligate the funds associated with an IPIA and IPERA assessment finding. De-obligation is accomplished through writing project worksheets (PW) for which the IPIA and IPERA assessment finding applies. When funds are moved into SMARTLINK, PA will process a PW to de-obligate the funds from the project and notify the appropriate IPIA and IPERA assessors. The process of de-obligation is performed as follows:

1. The Region coordinates with the Grantee, and then the Grantee coordinate with the subgrantee to recover funds from the subgrantee to re-deposit into the SMARTLINK account for de-obligation.



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2. The PA Regional Office/ Division and Grantees verify with the Regional Grants Division that the money requested for de-obligation matches what is shown in SMARTLINK.
3. If the recovery action is tied to a specific PW (Category A- G, and Z), the funds are de-obligated from that PW by writing a new version. If the recovery is for administrative funds, a de-obligation is processed in a Category Z PW.

With Open Disasters: The funds are de-obligated from the PW (Category A-G, and Z) by the version process prior to the disaster closing. The disaster and SMARTLINK are still open.

- a. A project worksheet is obligated to the Grantee. If the Grantee has not paid the subgrantee the total dollar value of the PW at this time, the Grantee can transfer that de-obligation back to FEMA via SMARTLINK.
- b. If the subgrantee was paid the balance on the PW, the Grantee notifies the subgrantee that it must reimburse the Grantee the improper amount. Once the subgrantee reimburses the improper amount to the Grantee, then the Grantee must transfer the improper amount back to FEMA via SMARTLINK.
- c. The Integrated Financial Management Information System (IFMIS) and SMARTLINK are adjusted following the de-obligation.

With Closed Disasters: The disaster has been closed by FEMA Headquarters. At this point, SMARTLINK is closed. The following steps apply for recovery of funds when a disaster is programmatically-closed:

- a. The Grantee submits a check/warrant in the amount of the OCFO Findings letter to the Regional office within 60 days of the Grantee's receipt of the Findings letter or within 30 days from the Grantee's receipt of FEMA's last appeal decision.
 - b. The Regional Grants staff then submits the payment to the FEMA lock box with an explanation that includes the DR number, the Program (PA), and returned funds to the FEMA's Central Depository Address (**See Appendix B**).
4. Copy of Final Records. The Region will provide both the Grantee and OCFO with a copy of all final documentation that verifies all parties (the Region, Grantee, and subgrantee) have taken the appropriate actions necessary to satisfy and close all cases in question.



8.0 Recovery of Improper Payments: Unreturned Grant Funding

Please see **Appendix C** for the Submission of debt to the FEMA Finance Center: State, Local, Tribal, and Territorial Debts.

9.0 Time Limitations on Collection of Outstanding Debt: Stafford Act, Section 705(a)

1. Section 705(a) of the Stafford Act (42 U.S.C. § 5205(a)), creates a limit on collection and administrative offset pursuant to existing statutory authority [31 U.S.C. § 3711(a)]. This limit on collection applies to all recovery actions, including the recovery of improper payments under IPIA/IPERA. Section 705(a)(1) provides that “no administrative action to recover any payment made to a State or local government for disaster or emergency assistance under [the Stafford] Act shall be initiated in any forum after the date that is 3 years after the date of transmission of the final expenditure report for the disaster or emergency.”
2. Recovery audits are performed based on the PA Program’s previous fiscal-year expenditures. For example, a Recovery audit that was performed in 2011 was based on PA’s FY 2010 obligations. Therefore, improper payment(s) found in FY 2011 may apply to payments associated with closed subgrantee projects and closed grants under the PA Program.
3. The limitation on collection by the FFC applies to outstanding debt associated with an applicant project, *after* completion of all subgrantee grants reconciliation, and *after* grant closeout (See final expenditure report definition in Section 5.0).
4. Therefore, PA and the FFC must identify the status of the grant as open or closed. If closed, PA must identify the date of programmatic closeout prior to certification of the Debt Collection Package (DCP) to the FFC for formal collection (**Appendix D**).

REFERENCES



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- A. *Improper Payments Information Act of 2002* (P.L. 107-30, as amended; 31 U.S.C. § 3321).
- B. *Improper Payments Elimination and Recovery Act of 2010* (P.L. 111-204; 31 U.S.C. § 3321).
- C. *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (P.L.93-288, as amended; 42 U.S.C. §§ 5121 et seq.).
- D. *Debt Collection Act of 1982; Debt Collection Improvement Act of 1996* (P.L. 97-365; 31 U.S.C. §§ 3107-3720).
- E. 31 CFR Part 285, *Debt Collection Authorities under the Debt Collection Improvement Act of 1996*.
- F. 44 CFR Part 13, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government*.
- G. 44 CFR § 206.206, *Appeals*.
- H. Office of Management and Budget (OMB) Circular A-129 revised, *Policies for Federal Credit Programs and Non-Tax Receivables*, November 2000.

For additional information, please refer to the following:

http://www.whitehouse.gov/omb/memoranda_m03-13/

<http://www.whitehouse.gov/blog/2010/07/22/improper-payments-elimination-and-recovery-act-cutting-waste-and-fraud-government>