Recouping Federal Grant Awards: How and Why Grant Funds Are Clawed Back

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Since 2020, Congress has provided unprecedented levels of funding to federal grant programs. For instance, according to the Pandemic Recovery Accountability Committee (PRAC), Congress has provided $2.6 trillion to state, local, and tribal governments, as well as other eligible entities, for COVID-19 pandemic response and recovery activities. An additional $550 billion was provided to states under the Bipartisan Infrastructure Act. These amounts are in addition to regular grant appropriations that average approximately $640 million annually.

SUMMARY

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Given the levels of grant program funding currently available to states, local governments, and tribal governments, as well as their existing capacity, several grant management challenges may arise. For instance, grant recipients must comply with statutory and regulatory provisions for federal grant programs, and with any additional terms and conditions described in the grant agreements executed in awards of federal grant funds. When grantees are not compliant, the federal grantor agency may seek to recapture awarded grant funds through recoupment processes (commonly known as clawbacks). Recoupment is a legal construct that allows the federal government to recover (recoup) money that was paid improperly. Improper payments are payments made by the federal government to a grant recipient that was an overpayment, payment for an ineligible expense, or payment made to a grant recipient who was later determined to be in breach of the terms and conditions of the grant agreement. According to the Government Accountability Office (GAO), for FY2023, the federal government reported approximately $236 billion in improper payments. Overpayments represented about 74% ($175.1 billion) of that amount. Recouping improper payments can be administratively burdensome for federal agencies due to the collection and review of documentation, and the legal process for recovering the improper payments. Consequently, GAO recommends reducing improper payments, and thus mitigating the need to recoup grant funds, in order to achieve cost savings and improve the government's fiscal position.

This report discusses the process by which the terms and conditions of federal grant awards are established, the definitions of recoupment and clawbacks, how noncompliance and improper payments are evaluated by federal grantor agencies, and considerations for Congress in evaluating federal grant recoupment.

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Introduction

Federal grants are awarded under legally binding agreements, such as grant agreements or cooperative agreements. These agreements include terms and conditions that are required to be met by the grantee in order for the grantee to be in compliance with federal statutory and regulatory provisions. When the grantee is found to be in noncompliance with the terms and conditions of a federal grant award, the grantee may be required to return the funds to the federal government. The process by which a federal agency seeks repayment of expended funds for noncompliance is known as *recoupment* where the federal government is seeking to recoup funds previously paid to the grantee. Recoupment processes are sometimes called grant funding *clawbacks* since the federal government is taking back previously awarded funding.

The recoupment process begins when a payment made by the federal government was determined to be "improper" since it was either an overpayment to the recipient, or a payment for an expense later determined to be ineligible under the terms and conditions of the grant agreement. The Government Accountability Office (GAO) estimates that the federal government made approximately $236 billion in improper payments in FY2023.[1] According to GAO, "reducing improper payments ... is critical to safeguarding federal funds and could help achieve cost savings and improve the government's fiscal position."[2] In addition to these benefits, reducing the level of improper payments mitigates the need to recoup grant funds. This reduces the administrative burden on the federal agencies faced with collection and review of documentation associated with recoupment, and alleviates the financial uncertainty of grant recipients who may be required to pay back already expended grant funds.

Administering Federal Grants: The Role of a Federal Agency

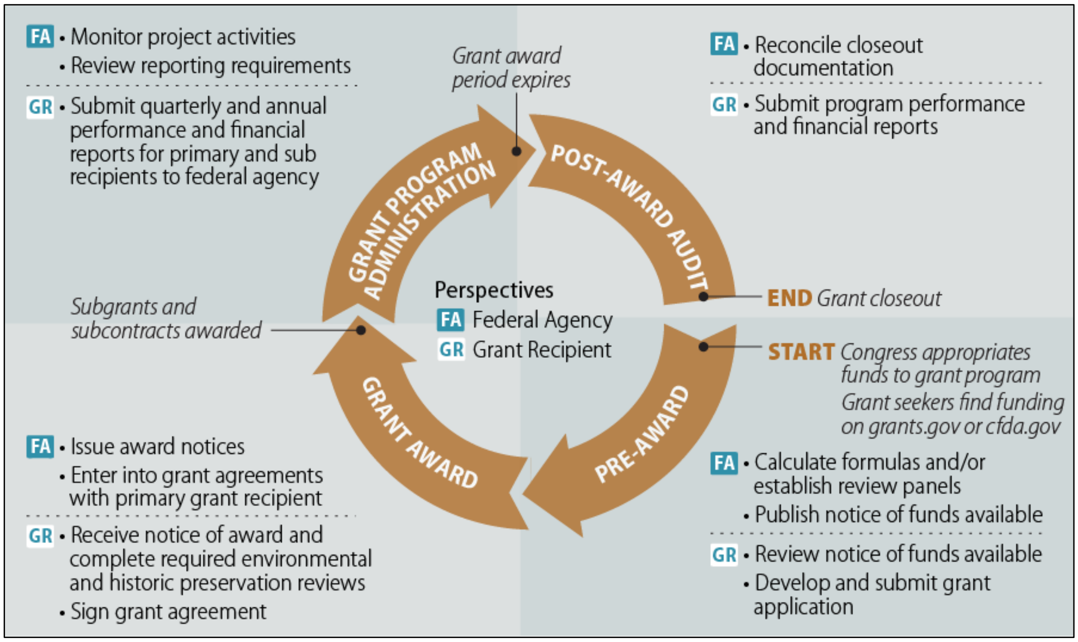
Recoupment of federal grant funds is a process often initiated as a result of the grant recipient's noncompliance with requirements of the grant award. The process for establishing the requirements for compliance, and evaluating the extent to which a grant recipient is in compliance, occurs throughout the life cycle of a federal grant as depicted in **Figure 1**.[3]

[1] GAO, *Payment Integrity: Significant Improvements Are Needed to Address Improper Payments and Fraud*, GAO-24-107660, September 10, 2024, p. 5.

[2] Ibid, p. i.

[3] For additional information on the life cycle of a federal grant, see CRS Report R42769, *Federal Grants-in-Aid Administration: A Primer*, by Natalie Paris.

Figure 1.Life Cycle of a Federal Grant



Source: Congressional Research Service.

Pre-Award Phase

During the pre-award phase, the federal agency develops guidance for grant recipients that provides detailed information on the allowable use of funds and develops the terms and conditions of the grant award that will be incorporated into the grant agreement based upon statutory and regulatory provisions for the grant program. The federal agency also evaluates each potential grant recipient to assess whether the grant recipient is at high risk for mismanaging federal grant funds. Additional terms and conditions may be included in the grant agreement for high-risk grant recipients. The criteria that will be used to evaluate grant recipients for compliance with the terms and conditions of the grant agreement during the post-award phase are also developed during the pre-award phase.

Grant Award and Project Implementation Phase

During the grant award phase, the federal agency and the grant recipient execute the grant agreement. As the grant recipient begins expending federal grant funds pursuant to the allowable use of funds set forth in the grant agreement, the federal grantor agency may provide technical assistance to ensure that grant funds are appropriately expended. The federal agency may also conduct reviews of the grant funded project, including undertaking site visits and reviewing quarterly financial reports to identify expenses that may be potentially disallowed before the period of performance for the grant-funded project expires. The grant recipient must adjust any potential disallowed expenditure during the period of performance since grant funds can only be expended during that period.

Post-Award Phase

During the post-award phase, the federal grantor agency reviews any documentation submitted by the grant recipient, including any financial audits, to review expenditures to ensure that funds were expended only for allowable costs. Any costs that do not appear to align with the allowable use of funds are deemed to be *questioned costs*. The federal agency conducts additional review of questioned costs and may determine that such costs were expended in noncompliance with the terms and conditions for the grant program. The federal agency may then potentially implement recoupment of funds that were deemed to have been incorrectly expended since payment of a disallowed cost is considered to be an improper payment.

Defining Recoupment and Improper Payments

When evaluating federal grant compliance, the federal grantor agency determines whether the grant recipient used the funds in an allowable way, or whether the grant funds were expended incorrectly (and thus may be subject to recoupment after being designated as improper).

Defining Federal Grant Recoupment, Clawbacks, and Improper Payments

As discussed above, grant recipients are awarded federal funding contingent upon full compliance with the statutory, regulatory, and contractual provisions set forth in the grant agreement. Grant agreements can vary significantly by program and agency, and also by applicant. When the grant recipient is found to be in noncompliance with their agreement, the federal grantor agency may initiate a process to recapture awarded funds. This process is known as *recoupment,* and the federal grantor agency *claws back* funds that have already been provided to the grant recipient. For the federal grantor agency to make a determination that funds need to be recouped, the federal agency must evaluate how the grant recipient used federal grant funds and whether that use of funding was in compliance with the grant agreement. Expenditures that were made by the grant recipient that were not in compliance are designated as an *improper payment*.

Improper Payment

As set forth in the Payment Integrity Information Act of 2019 (P.L. 116-117), the term 'improper payment'

> (A) means any payment that should not have been made or that was made in an incorrect amount, including an overpayment or underpayment, under a statutory, contractual, administrative, or other legally applicable requirement; and
>
> (B) includes
>
> > (i) any payment to an ineligible recipient;
> >
> > (ii) any payment for an ineligible good or service;
> >
> > (iii) any duplicate payment;
> >
> > (iv) any payment for a good or service not received, except for those payments where authorized by law; and
> >
> > (v) any payment that does not account for credit for applicable discounts.

Process for Making an Improper Payment Determination

Federal agencies may identify questionable expenditures through a number of ways, including reviewing audits submitted by the grant recipient, conducting site visits and reviewing expenditure documentation such invoices, and reviewing financial reports submitted by the grant recipient.[4] Once a questioned cost is identified, the federal agency is to review the statutory and regulatory provisions and the grant program guidance to evaluate whether the questioned cost was disallowed. If the payment is designated as improper, there are statutory and regulatory

[4] For additional discussion of improper payments, see CRS Report R47902, *Improper Payments in Pandemic Assistance Programs,* by Garrett Hatch and Natalie R. Ortiz.

provisions that require the recoupment of those funds. **Figure 2** shows the steps used to make an improper payment designation.

Figure 2.Improper Payment Designation

Source: Congressional Research Service, July 2024.

Statutory Requirements for Recouping Improper Payments

Once a federal agency has designated a payment made under a grant award to be an improper payment, the federal agency must begin the process of recouping that payment. This requirement is based upon provisions in the Debt Collection Improvement Act of 1996 (DCIA)[5] and the Payment Integrity Information Act of 2019 (PIIA).[6]

Debt Collection Improvement Act of 1996

The Debt Collection Improvement Act of 1996 (DCIA) requires federal agencies to "collect a claim of the U.S. government for money or property."[7] These claims are often the result of audits or review of federal grant documentation. Some of the key provisions of DCIA included an enhanced authority for federal agencies to offset amounts owed by grant recipients by reducing future award amounts, barring delinquent debtors from getting additional federal financial assistance, and reporting debtors to credit bureaus.[8] These provisions provided federal agencies additional tools to use during the recoupment process.

Payment Integrity Information Act of 2019

The Payment Integrity Information Act of 2019 (PIIA) establishes guidelines for identifying, measuring, preventing, and reporting on improper payments for all federal agencies.[9] According to the Chief Financial Officers Council:

> Effective stewardship of taxpayer funds is a critical responsibility of the Federal Government and the Chief Financial Officer has the responsibility for all financial

[5] Debt Collection Improvement Act of 1996 (DCIA), P.L. 104-134.

[6] Payment Integrity Information Act of 2019 (PIIA) P.L. 116-117.

[7] DCIA, P.L. 104-134, 110 Stat. 1321-378, 379.

[8] Ibid.

[9] Payment Integrity Information Act of 2019 (PIIA, P.L. 116-117). For additional information on how federal agencies evaluate and report on improper payments, see CRS Report R47902, *Improper Payments in Pandemic Assistance Programs*, by Garrett Hatch and Natalie R. Ortiz.

> management operations and activities in their agency. Improper payments not only impact financial stability, but they are also harmful to the integrity and reputation of the Federal Government and degrade the public's trust. By making payment integrity a top priority, the CFO Council improves the prevention of improper payments and protects taxpayer money.[10]

Waiving Recoupment

In most cases, federal agencies do not have the authority to waive recoupment of improper payments as required by the DCIA and PIIA. However, Congress has provided limited recoupment waiver authority for specific programs and for certain recoupment efforts. For example, the Disaster Recovery Reform Act of 2018 (DRRA) authorized the Federal Emergency Management Agency (FEMA) administrator to waive recoupment of funds provided under the Individual Assistance grant program when the debt was due to an error by FEMA and not the fault of the recipient, and where the collection of the debt would be against "equity and good conscience."[11] This waiver authority allows FEMA to waive the recoupment for current and future recipients who meet the eligibility parameters.

Other congressional waiver authority may be limited to other specific criteria. For example, the Disaster Assistance Recoupment Fairness Act of 2011 provided FEMA the authority to waive recoupment of payments to recipients under the Individual Assistance program for payments made in a specific time period.[12]

Regulatory Requirements for Recouping Improper Payments

Federal regulations may also impose requirements on federal agencies to recover improper payments. These regulations may apply to federal agencies broadly, such as 31 C.F.R., Parts 900-904, which describes standards for the collection and compromise of debts, termination of agency collection, and the referral of civil claims to the Department of Justice. Specific regulations for a grant program may also include requirements pertaining to recoupment. For example, the Department of Homeland Security (DHS) promulgated debt collection regulations for DHS programs that establishes debt collection standards specific to the agency.[13]

[10] Chief Financial Officers Council, at https://www.cfo.gov/payment-integrity/why-this-matters/, accessed October 1, 2024.

[11] Disaster Recovery Reform Act of 2018 (DRRA), Division D of P.L. 115-254. For additional discussion of the recoupment waiver provisions for the FEMA Individual Assistance program, see CRS Report R45819, *The Disaster Recovery Reform Act of 2018 (DRRA): A Summary of Selected Statutory Provisions*, coordinated by Elizabeth M. Webster and Bruce R. Lindsay.

[12] According to the Department of Homeland Security Office of Inspector General, FEMA identified approximately $371 million in improper payments to 91,178 recipients who received payments from the Individual Assistance Program in the time frame of August 28, 2005, through December 31, 2010 (DHS OIG-13-7, *FEMA's Efforts to Recoup Improper Payments in Accordance with the Disaster Assistance Recoupment Fairness Act of 2011*, p. 2). FEMA ultimately waived recoupment of $250 million of that amount (for 76,310 recipients) under the recoupment waiver authority provided by the Disaster Assistance Recoupment Fairness Act of 2011 (DARFA, Section 565 of the Consolidated Appropriations Act, 2012, P.L. 112-74).

[13] 6 C.F.R., Subpart A.

Federal Agency Discretion in Determining Whether a Payment is Improper

The process by which a federal agency evaluates a questioned cost prior to making an improper payment designation involves utilization of discretion regarding how that cost aligns with the statutory and regulatory provisions for use of grant funds. Federal agencies also assess the questioned costs based on grant program guidance to determine whether the cost was allowed. When the eligible use of funds in the statutory and regulatory provisions are broad, and the grant guidance does not provide enough detail to clearly delineate what constitutes an allowable cost, the grant recipient may struggle to understand what an allowable use of grant funding is. In some programs, the grant guidance is adjusted multiple times in a single fiscal year. Frequently adjusting the grant guidance may increase confusion in what constitutes an allowable use. For example, the Department of the Treasury issued multiple guidance documents over the span of several months on the allowable use of Coronavirus Relief Funds provided to certain states and localities.[14] States asserted that the changing guidance was creating confusion about how Coronavirus Relief Funds could be used for pandemic response and recovery.[15]

Recoupment Process

Each federal agency has the discretion to implement the recoupment process specific to individual grant programs. A typical recoupment process may be similar to the steps and process identified in **Table 1** for the FEMA Individual Assistance grant program.

Table 1. FEMA Process for Identifying and Validating Individual Assistance Debt Payments

STEPS	PROCESS
Identifying Potential Debt	FEMA staff review cases to identify potential debts and submit the case for additional review and validation.
Verifying Potential Debt	Each case is assigned to another FEMA staff member who reviews to ensure the decision to request an applicant return funds to FEMA is necessary. Reasonable efforts are made to identify assistance the applicant was eligible to receive and does not need to be returned. FEMA may contact applicants at this stage to give them an opportunity to provide additional documentation to resolve the issue.
Potential Debt Notification and Appeal	Multiple FEMA managers are required to review each case and concur on the type and amount of assistance that must be returned. FEMA managers also review the case to ensure all appropriate steps to resolve the issue were taken. When FEMA managers determine the assistance must be returned, a written notice is sent to the applicant notifying them of their potential debt, the reason the applicant is not eligible for the assistance provided, and information regarding how they may appeal and/or request an oral hearing.
Appealing a Potential Debt	Applicants may submit a written appeal within 60 days of receiving written notice of their potential debt.

[14] For examples of the guidance documents, see https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/coronavirus-relief-fund.

[15] Center for Budget and Policy Priorities, *Good Reasons Why States Haven't Yet Spent All Coronavirus Relief Funds*, June 25, 2020, at https://www.cbpp.org/blog/good-reasons-why-states-havent-yet-spent-all-coronavirus-relief-funds.

STEPS	PROCESS
Establishing Debt	If an applicant does not appeal the decision or their appeal is not granted, the debt becomes final and is forwarded to the FEMA Financial Center (FFC) to continue debt collection activities.
Debt Compromise, Suspension, and Termination	Once a debt has been established, applicants may work with the FFC to make payment arrangements. In limited circumstances, the FFC may suspend or terminate debt collection.
Transfer of Debt to Treasury	If the applicant has not repaid the debt or has not entered into a repayment plan within 120 days of the FFC's letter, FEMA refers the debt to Treasury for collection. Significant additional costs will be incurred as a result of referral to Treasury.

Source: Federal Emergency Management Agency (FEMA), *Individual Assistance Program and Policy Guide (IAPPG)*, Version 1.1, FP-104-009-03, May 2021, p. 177.

Considerations for Congress

The process for reviewing grant recipient expenditures involves several steps before the expenditure is referred to the Department of Justice for collection of a debt to the U.S. government, and federal agencies may exercise discretion at various points in the recoupment process. Congress may wish to consider whether federal agencies are undertaking federal grant award recoupment in an appropriate way.

Mitigating Versus Waiving Recoupment

Once the improper payment designation has been made, law and regulations *require* that the federal agency seek recoupment of the improper payment. However, the federal agency may be able to mitigate recoupment at various phases of the grant life cycle. For example, the federal agency may conduct a review of expenditures while the grant period of performance is still active. If the federal agency discovered that there may be potential disallowed costs, the agency could advise the grant recipient to adjust its expenditures for allowable costs instead. Once the period of performance has expired, however, the grant recipient is not allowed to change any expenditure or make additional expenditures. Therefore, the sooner the federal agency can identify potential disallowed costs, the more remediation becomes possible.

Federal agencies may also utilize discretion in designating an expenditure as disallowed. For example, the statutory provisions for eligible use of funds for a grant program may include fairly broad definitions. The federal agency may exercise discretion in how the statutory use is interpreted for a specific award. Congress may wish to evaluate if agency discretion in the interpretation of the eligible use of funds has been applied consistently and equitably across all grant recipients in a grant program.

Additionally, there is a notable difference between a federal agency's authority to exercise discretion in the administration of a grant program, and the federal agency authority to waive recoupment of a payment that was made improperly. Authority to waive recoupment that is required under existing law would require Congress to grant a specific waiver of the recoupment of that improper payment.

Preventing Improper Payments to Reduce Recoupment

Federal agencies are directed to evaluate grant recipients to assess the risk of mismanagement of grant funds prior to making a grant award.[16] Risk assessment criteria includes evaluating the grant recipient for: financial stability, appropriate financial and performance management systems and standards, grant management past performance, previous audit reports and findings, and the ability to effectively implement requirements.[17] If the risk assessment indicates that the grant recipient is at high risk for mismanaging grant funds, the federal agency may adjust the grant agreement. These adjustments may include more frequent site visits and report requirements (for instance, monthly instead of quarterly). The adjustment of these requirements is designed to provide more opportunities to assist the grant recipients in ensuring that all expenditures are allowable, thereby reducing the possibility of recoupment. Additionally, federal agencies may deploy more technical assistance to high-risk grant recipients to assist with managing grant funds as an additional way to mitigate the risk of recoupment.[18] Congress may wish to consider whether existing technical assistance resources are being appropriately targeted to mitigate the risk of recoupment of grant funds.

Federal Agency and Grant Recipient Capacity

GAO has reported that human capital, organizational, and financial capacities at both federal agencies and nonfederal entities are key to successful grants management.[19] Recoupment can be the result of mismanagement of federal grant funds. This mismanagement may be attributed, in part, to the lack of resources of the grant recipient to appropriately administer the funding. Specifically, the grant recipient may be unclear about what the specific requirements are for ensuring compliance with the terms and conditions of the grant award. Consequently, the grant recipient may undertake expenditures that are later disallowed because there was confusion on exactly how the grant funds could be spent. Additionally, the federal agency may face capacity challenges in administering grant funds. As discussed above, while additional monitoring activities (particularly monitoring of high-risk grant recipients) mitigates recoupment, federal agencies may not have sufficient resources to allow for appropriate levels of monitoring in the grant award phase. As a result, disallowed costs may not be identified until the post-award phase when the grant recipient is unable to adjust the expenditures since the period of performance would have expired.

[16] 2 C.F.R. 200.206, *Federal Awarding Agency Review of Risk Posed by Applicants*.

[17] Ibid.

[18] For additional discussion on technical assistance for federal grant programs, see CRS Report R47607, *Federal Grant Technical Assistance: Definition, Use, and Considerations for Congress*, by Natalie Paris.

[19] For example, see U.S. Government Accountability Office (GAO), *Grants Management: Observations on Challenges with Access, Use, and Oversight*, Testimony from Director Jeff Arkin before the Senate Homeland Security and Governmental Affairs Committee, GAO-23-106797, May 2, 2023. In the testimony, GAO defines *human capital capacity* as “the extent to which an organization has sufficient staff, knowledge, and technical skills to effectively meet its goals and objectives”; *organizational capacity* as “the degree to which a grant-making agency or grant recipient is institutionally prepared to manage and carry out grants”; and *financial capacity* as “the ability of grantees or grant applicants to meet financial responsibilities related to federal grants. A lack of financial capacity can reduce an organization’s ability to apply for grants that require local resource investments or maintenance of effort provisions.”

Technical Assistance

Federal agency and grant recipient capacity may be addressed by providing technical assistance. In some cases, the federal agency could increase the amount of technical assistance available to a grant recipient to assist with ensuring all expenses made under the grant are in compliance with program requirements. In other cases, federal agencies may utilize existing technical assistance resources to increase monitoring activities during the grant award period to identify and resolve questioned costs before they are designated as an improper payment.

Congress may wish to evaluate agency and grant recipient capacity and the availability of technical assistance to address the risk of recoupment for certain high-risk grant recipients.

Summary

Federal grant awards may be recouped, or clawed back, for a number of reasons. Causes of recoupment may include, among other things, error on the part of the federal agency in calculating the payment, recipient use of funds for disallowed expenses, fraud, or duplication of federal benefits. Once a payment has been determined to be improper, federal law requires that the federal agencies designate the payment as a debt to the federal government that must be collected from the grant recipient. Generally, federal agencies do not have the authority to waive recoupment of the debt. However, there may be limited program-specific statutory authority to suspend or terminate the debt collection.

Recoupment is an administratively burdensome process for both the federal agency and the recipient facing the debt collection. Consequently, efforts to mitigate the improper payments prior to making the payment, and providing guidance, and other types of technical assistance to promote good grant management practices by the recipients, may encourage cost-effective and efficient use of taxpayers' money.

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