



U.S. DEPARTMENT OF HOMELAND SECURITY **OFFICE OF INSPECTOR GENERAL**

OIG-25-03

November 5, 2024

FINAL REPORT

FEMA Needs to Take Additional Action to Comply with Premium Pay Laws and Regulation





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U.S. Department of Homeland Security

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

November 5, 2024

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

FROM: Joseph V. Cuffari, Ph.D. **JOSEPH V
CUFFARI** Digitally signed by
Inspector General JOSEPH V CUFFARI
Date: 2024.11.05
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SUBJECT: *FEMA Needs to Take Additional Action to Comply with Premium Pay
Laws and Regulations*

Attached for your action is our final report, *FEMA Needs to Take Additional Action to Comply with Premium Pay Laws and Regulations*. We incorporated the formal comments provided by your office.

The report contains four recommendations aimed at improving FEMA's management of premium pay and strengthening its compliance with Federal laws and regulations. Your office concurred with all four recommendations.

Based on information provided in your response to the draft report, we consider recommendations 1 through 4 open and resolved. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions and of the disposition of any monetary amounts.

Please send your response or closure request to OIGAuditsFollowup@oig.dhs.gov.

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 contact me with any questions, or your staff may contact Kristen Bernard, Deputy Inspector General, Audits, at (202) 981-6000.

Attachment



DHS OIG HIGHLIGHTS

FEMA Needs to Take Additional Action to Comply with Premium Pay Laws and Regulations

November 5, 2024

Why We Did This Audit

FEMA's mission includes responding to natural disasters. FEMA uses premium pay to compensate employees who work additional hours responding to those disasters. We conducted this audit to determine whether FEMA complied with laws and regulations for premium pay issued to employees responding to disasters in 2021 and 2022.

What We Recommend

We made four recommendations to improve FEMA's management of premium pay and compliance with Federal laws and regulations.

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

Although the Federal Emergency Management Agency (FEMA) has strengthened internal controls over premium pay since we issued OIG-18-71, *FEMA Paid Employees Over the Annual Premium Pay Cap*, in July 2018, FEMA's Office of the Chief Human Capital Officer did not fully comply with Federal laws and regulations for premium pay earned by employees responding to disasters in 2021 and 2022. Instead, FEMA:

- overpaid General Schedule (GS) employees an estimated \$397,000 beyond the statutory pay caps and underpaid other GS employees an estimated \$594,000;
- did not adequately manage premium pay, resulting in GS employees forfeiting an estimated \$2.6 million; and
- did not issue \$2.7 million in premium pay in a timely manner to temporary employees hired under the authority of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act*.

These issues occurred because FEMA did not design and implement internal controls to accurately issue premium pay in accordance with Federal laws and regulations, FEMA employees worked overtime for non-waived disasters, and FEMA incorrectly applied a biweekly pay cap to Stafford Act employees.

FEMA took proactive corrective actions during our audit to update its premium pay policy and correct errors identified by our audit. However, additional action is needed for FEMA to manage premium pay in compliance with Federal laws and regulations, limit employee forfeiture of premium pay, and issue all premium pay to Stafford Act employees in a timely manner.

FEMA Response

FEMA concurred with all four recommendations. Appendix B contains FEMA's management response in its entirety.



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Abbreviations

C.F.R.	Code of Federal Regulations
CY	calendar year
ECD	estimated completion date
FEMA	Federal Emergency Management Agency
FLSA	Fair Labor Standards Act
GS	General Schedule
OCHCO	Office of the Chief Human Capital Officer
OPM	U.S. Office of Personnel Management
SAE	Stafford Act employee
SOP	standard operating procedures
U.S.C.	United States Code
WebTA	Web Time and Attendance System



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Background

The Federal Emergency Management Agency (FEMA) helps communities mitigate the risk of disasters, leads the coordination of Federal response efforts to stabilize communities during and after disasters, and provides support for individuals and communities to rebuild and become more resilient. To accomplish this mission, FEMA employs more than 20,000 people nationwide. These employees include permanent General Schedule (GS) employees and temporary employees hired under the authority of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (Stafford Act);¹ these temporary employees are known as Stafford Act employees (SAE). The *Fair Labor Standards Act* (FLSA)² establishes compensation standards for employees. GS employees are categorized as either exempt or nonexempt from the FLSA based on the work performed.

FEMA uses premium pay to compensate employees who work certain excess hours (i.e., more than 80 hours in a 2-week pay period) when responding to disasters. Premium pay is governed by sections codified within Title 5 of the United States Code (U.S.C.) and related U.S. Office of Personnel Management (OPM) regulations in Title 5 of the Code of Federal Regulations (C.F.R.) Part 550, *Pay Administration (General)*. Premium pay is defined in 5 C.F.R. Part 550 as the dollar value of compensatory time and additional pay provided to employees for working certain types of hours or under certain types of conditions, such as overtime pay, holiday pay, and night pay differential.³ According to payroll data for calendar years (CYs) 2021 and 2022, FEMA employees responding to disasters earned premium pay totaling approximately \$200 million. See Table 1 for the number of FEMA employees responding to disasters and premium pay amounts by CY.

Table 1. FEMA Employees Responding to Disasters and Premium Pay Amounts in CYs 2021 and 2022

Premium Pay Category	2021	2022
Number of Employees	12,967	12,214
\$ Amount	\$105,879,695	\$92,626,806

Source: Department of Homeland Security Office of Inspector General analysis of FEMA Web Time and Attendance System (WebTA) data

¹ 42 U.S.C. 5121 et seq.

² 29 U.S.C. 201 et seq.

³ According to 5 C.F.R. § 550.103, premium pay excludes overtime and compensatory time off in lieu of overtime earned by FLSA nonexempt employees.



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Federal laws and regulations, as well as DHS and FEMA policies, set pay caps on specified employees' biweekly and annual earnings.

The following key criteria apply to the payment of premium pay to GS employees:

- 5 U.S.C. § 5547, *Limitation on premium pay*, limits the amount of premium pay that GS employees may receive.
 - According to 5 U.S.C. § 5547, GS employees' *biweekly* compensation, including premium pay, cannot exceed the maximum rate of basic pay for GS-15 or Level V of the Executive Schedule. An agency may waive this biweekly pay cap for GS employees performing mission-critical work (i.e., emergencies or disasters).
 - However, the total annual compensation a GS employee receives still cannot exceed the *annual pay rates* for GS-15 or Level V of the Executive Schedule. An employee who reaches their biweekly or annual pay cap may still be ordered to perform work without receiving further compensation.
 - Congress increased the annual premium pay caps from Level V of the Executive Schedule to Level II in 2021 for GS employees responding to COVID-19. Specifically, Pub. L. 116-260, *Consolidated Appropriations Act, 2021*, dated December 27, 2020, Division M, Title III, Section 303, provided authority to increase the annual premium pay cap to \$199,300 in 2021.
 - In CYs 2021 and 2022, DHS executed 17 waivers impacting FEMA employees for disasters such as Hurricane Ian, Hurricane Ida, and the wildfires in the western United States. For example, on September 1, 2021, the DHS Chief Human Capital Officer waived the biweekly pay cap for GS employees responding to Hurricane Ida. See Figure 1 for an excerpt from the waiver.



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Figure 1. Waiver of the Biweekly Pay Cap for Hurricane Ida

September 1, 2021

MEMORANDUM FOR DISTRIBUTION

FROM: Angela Bailey *Angela Bailey*
Chief Human Capital Officer

SUBJECT: Hurricane Ida – Application of Annual Premium Pay Limit Instead of Biweekly Premium Pay Limit

Pursuant to 5 U.S.C. § 5547(b), I have determined that the devastating impact of Hurricane Ida constitutes an emergency for the purposes of waiving the biweekly premium pay limitations of 5 U.S.C. § 5547(a) and applying an annual premium pay limitation instead. Employees are entitled to premium pay under an annualized limit for preparation, response and recovery efforts directly related to this emergency and its immediate aftermath, beginning August 15, 2021 (the first day of the pay period during which preparations for this emergency work began) and continuing through December 31, 2021.

Source: DHS memorandum

- 5 C.F.R. § 550.106 contains instructions for calculating biweekly and annual pay caps. To calculate the biweekly pay cap, Federal officials must divide the published annual rate of pay by 2,087 hours and multiply that amount by 80 hours. To calculate the annual pay cap, officials must multiply the biweekly pay cap by the number of pay periods in the CY.
- DHS Compensation Guidance CG-1-2021, *Deferring Payment of Additional Premium Pay When an Annual Premium Pay Cap Applies*, May 17, 2021, requires components to defer payment of any additional premium pay above the biweekly premium pay cap until the end of the CY, or upon an employee's separation from FEMA, whichever comes first.
- See Table 2 for OPM's calculation of the maximum biweekly and annual pay caps for GS employees in 2021 and 2022.



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Table 2. Maximum⁴ Biweekly and Annual Pay Caps for CYs 2021 and 2022

Pay Type	2021	2022
GS Employee Maximum Biweekly	\$6,612	\$6,758
GS Employee Maximum Annual	\$171,912	\$175,718
GS Employee Maximum Annual for COVID-19 Work	\$198,632 ⁵	-

Source: OPM calculation of the biweekly pay cap

The following key criteria applies to the payment of premium pay to SAEs:

- The Stafford Act, Section 306(b)(1), authorizes FEMA to appoint and fix the compensation of temporary employees without regard to provisions of Title 5 of the U.S.C. governing appointments in competitive service; and
- FEMA administers compensation for SAEs using its *Incident Workforce Pay Setting Guide*, November 7, 2017. According to the guide, SAEs are not limited by a maximum biweekly rate because their work responding to declared disasters and emergencies often leads to substantial amounts of overtime. During 2021 and 2022, the annual aggregate pay cap for SAEs was \$230,700.

The FEMA Administrator is responsible for ensuring FEMA's premium pay policies are administered per established regulations and OPM and DHS guidance. FEMA's Office of the Chief Human Capital Officer (OCHCO) is responsible for providing guidance for premium pay. OCHCO implemented FEMA Manual 253-2-1, *Premium Pay* (Premium Pay Manual), on February 11, 2014, to establish FEMA's policy on premium pay. FEMA updated the Premium Pay Manual in December 2023.⁶ OCHCO augmented the manual with a *Premium Pay Standard Operating Procedure* (SOP) on October 1, 2018. The Premium Pay SOP includes detailed guidance and policy direction to track and monitor the biweekly and annual pay caps for FEMA employees.

⁴ The pay caps are based on an employee's locality pay. Table 2 shows the maximum biweekly and annual pay for employees in the highest paid localities.

⁵ The 2021 GS employee maximum annual pay cap for COVID-19 work is calculated by dividing \$199,300 by 2,087 hours, then multiplying by 80 hours and 26 pay periods.

⁶ FEMA Manual 253-2-1, *Premium Pay, Version 2.0* dated December 2023 is not applicable to the period under audit. Therefore, the audit team did not review and apply it as criteria.



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The Premium Pay SOP requires OCHCO to perform daily checks to ensure FEMA employees' pay is capped at the biweekly rates. It also requires OCHCO to perform biweekly reconciliations to determine whether FEMA employees are at risk of exceeding the annual pay caps. To avoid exceeding annual pay caps, OCHCO caps both SAE and GS employees' earnings at the biweekly maximum and defers any excess premium pay until the end of the CY.⁷ At the end of the CY, OCHCO performs a manual reconciliation for FEMA employees whose excess premium pay was deferred and issues manual payments to employees who are owed deferred premium pay.

We conducted this audit to determine whether FEMA complied with laws and regulations for premium pay issued to employees responding to disasters in 2021 and 2022.

Prior OIG Audit Report

In a prior audit report, *FEMA Paid Employees Over the Annual Premium Pay Cap* (OIG-18-71, July 31, 2018), we determined that FEMA overpaid its employees because FEMA mistakenly believed the Department's payroll provider, the National Finance Center, had internal controls to enforce the annual pay cap, and because FEMA did not determine the FLSA status of employees during disaster deployments. As part of a corrective action plan to recommendations in OIG-18-71, FEMA began deferring exempt GS employees' premium pay in excess of the biweekly pay cap until the end of the CY. DHS OIG's recommendation to adhere to and/or update the Premium Pay Manual remained open and resolved until FEMA signed and published the updated Manual in December 2023.

Results of Audit

Although FEMA has strengthened internal controls over premium pay since we issued our prior report, FEMA OCHCO did not fully comply with Federal laws and regulations for premium pay earned by employees in 2021 and 2022. Instead, FEMA:

- overpaid GS employees an estimated \$397,000 beyond the statutory pay caps and underpaid other GS employees an estimated \$594,000;
- did not adequately manage premium pay, resulting in GS employees forfeiting an estimated \$2.6 million; and
- did not issue \$2.7 million in premium pay to SAEs in a timely manner.

These issues occurred because FEMA did not design and implement internal controls to accurately issue premium pay per Federal laws and regulations, FEMA employees worked overtime for non-waived disasters, and FEMA incorrectly applied a biweekly pay cap to SAEs.

⁷ There is no legal requirement to establish a biweekly pay cap for SAEs.



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FEMA Over- and Underpaid GS Employees Who Received Premium Pay Responding to Disasters in 2021 and 2022

FEMA did not accurately pay GS employees who received premium pay for responding to disasters in 2021 and 2022. We found 75 of 324 FEMA employees (23 percent) were not paid accurately from a statistical sample from 2,066 FEMA GS employees who had premium pay deferred until the end of the year in 2021 or 2022. We also found FEMA overpaid 35 GS employees (11 percent) a total of \$62,225 and underpaid 40 GS employees (12 percent) a total of \$93,080. Table 3 summarizes FEMA employees included in our sample who were over- and underpaid by year.

Table 3. Summary of FEMA GS Employees Included in Our Sample Who Were Overpaid and Underpaid in CYs 2021 and 2022

Payment Type	2021		2022		Total		
	Count	\$ Amount	Count	\$ Amount	Count	\$ Amount	
Overpaid	Paid for Work on Non-Waived Disasters	15	\$21,930	2	\$558	17	\$22,488
	Paid Above Annual Pay Cap	5	\$32,741	13	\$6,996	18	\$39,737
	Total Overpaid	20	\$54,671	15	\$7,554	35	\$62,225
Underpaid	38	\$90,317	2	\$2,763	40	\$93,080	
Total Errors	58	\$144,988	17	\$10,317	75	\$155,305	

Source: DHS OIG analysis of statistical sample testing results

- FEMA paid 17 GS employees (5 percent) beyond the biweekly cap who did not work on waived emergencies or disasters. Overpayments for work on non-waived emergencies or disasters totaled \$22,488 in 2021 and 2022, with one employee receiving \$12,476 for overtime not associated with a waived disaster. This occurred because FEMA officials did not have an internal control in place to review and approve their manual year-end reconciliations to identify errors in employee compensation.
- FEMA overpaid 18 GS employees (6 percent) by issuing them a total of \$39,737 in deferred premium pay over the annual pay caps in 2021 or 2022. This occurred because FEMA did not have an internal control in place to accurately calculate the annual pay cap. Specifically, FEMA used the published GS-15 step 10 annual rate of pay in the OPM salary table, instead of applying 5 C.F.R. § 550.106 to calculate the annual pay cap. This



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miscalculation resulted in FEMA OCHCO using a higher pay cap in its year-end reconciliations and paying premium pay in excess of the appropriate annual pay cap. See Table 4 for the annual pay cap calculations.

Table 4. Annual Pay Cap Calculations for CYs 2021 and 2022

CY	FEMA- Calculated Annual Pay Cap	5 C.F.R. § 550.106 Annual Pay Cap	Difference
2021	\$172,500	\$171,912	\$588
2022	\$176,300	\$175,718	\$582

Source: DHS OIG calculations based on OPM-published annual pay rates and 5 C.F.R. § 550.106(d), *Annual maximum earnings limitation*

- FEMA underpaid 40 GS employees (12 percent) \$93,080 by erroneously capping them at the biweekly cap when they were either nonexempt employees or working waived emergencies or disasters in 2021 or 2022. For example, FEMA incorrectly capped a nonexempt employee at the biweekly rate when the biweekly cap did not apply to the employee's overtime earned. This employee was underpaid a total of \$2,730 in premium pay in 2022. In another instance, an employee was underpaid \$8,253 in 2021 when that employee worked on a waived disaster and the employee's total compensation including premium pay was below the annual pay cap. This occurred because FEMA officials did not have an internal control in place to review and approve their manual year-end reconciliations to identify errors in employee compensation.

Expanding our findings to the total universe of 2,066 FEMA GS employees who had premium pay deferred in 2021 and 2022, we estimate with 95 percent confidence that FEMA overpaid 129 to 317 of these employees and that these overpayments totaled between \$62,224 and \$1,131,616, with a mid-point estimate of 223 employees overpaid \$396,776. Additionally, we estimate with 95 percent confidence that FEMA underpaid 155 to 355 employees and that these underpayments totaled between \$108,850 and \$1,402,306, with a mid-point estimate of 255 employees underpaid \$593,530. See Table 5 for our estimate of GS employees who were overpaid and underpaid during CY 2021 or 2022.



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Table 5. Estimated Overpaid and Underpaid FEMA GS Employees During 2021 or 2022

Estimate Type	Estimated Overpaid Employees	Estimated Overpayment \$ Amount	Estimated Underpaid Employees	Estimated Underpayment \$ Amount
Lower Bound Estimate	129	\$62,224	155	\$108,850
Mid-Point Estimate	223	\$396,776	255	\$593,530
Upper Bound Estimate	317	\$1,131,616	355	\$1,402,306

Source: DHS OIG statistical sample testing results

During our audit, FEMA took proactive steps to address portions of this finding. Specifically, FEMA OCHCO updated the Premium Pay SOP to include a secondary review and certification by a supervisor during the year-end reconciliations to limit potential errors. FEMA OCHCO also took action to recover \$38,311⁸ from overpaid employees and issued \$51,149⁹ to underpaid employees we identified.

FEMA GS Employees Forfeited Premium Pay

More than half of the GS employees in our sample forfeited premium pay by working hours that placed their compensation above the biweekly or annual pay caps. Specifically, 165 employees of our sample of 324 (51 percent) GS employees forfeited a total of \$407,092 in premium pay between 2021 and 2022. The average amount of premium pay forfeited by each of those employees was \$2,467, although we found one employee forfeited \$26,706. Expanding our results to the broader population, we estimate with 95 percent confidence that between 901 and 1,204 employees forfeited a minimum of \$1.4 million to a maximum of \$4.0 million between 2021 and 2022, with a mid-point estimate of 1,052 employees forfeiting compensation totaling \$2.6 million. See Table 6 for our analysis of GS employees who forfeited premium pay during 2021 or 2022.

⁸ FEMA agreed that 77 percent of the employees we identified were overpaid and billed these employees, although FEMA calculated different overpayment amounts than we did in some cases. At the time of our audit, FEMA had not billed the remaining 23 percent of employees we identified as overpaid.

⁹ FEMA agreed that 90 percent of the employees we identified were underpaid, although FEMA calculated different underpayment amounts than we did in some cases. At the time of our audit, FEMA had not issued payments for the remaining 10 percent of employees we identified as underpaid.



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Table 6. Estimated FEMA GS Employees Who Forfeited Premium Pay

Estimate Type	Estimated Employees	Estimated \$ Amount
Lower Bound Estimate	901	\$1,428,992
Mid-Point Estimate	1,052	\$2,595,842
Upper Bound Estimate	1,204	\$4,029,357

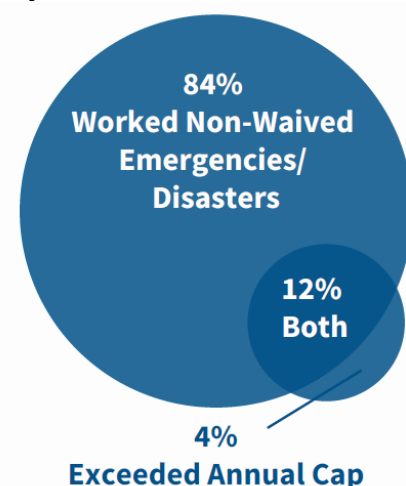
Source: DHS OIG statistical sample testing results

Although DHS has the authority to waive the biweekly pay cap for certain mission-critical work, allowing employees to earn up to the annual pay cap, most employees in our sample who forfeited premium pay did so because they worked on non-waived emergencies or disasters in 2021 and 2022. Therefore, those employees could not be paid deferred premium pay at the end of the CY. In fact, of the 165 employees we identified as forfeiting premium pay, 138 (84 percent) forfeited because the additional hours they worked were not on a waived emergency or disaster. Additionally, 7 employees (4 percent) forfeited premium pay by working on a waived emergency or disaster but exceeding the annual pay cap, and 20 (12 percent) employees forfeited premium pay for both working non-waived projects and exceeding the annual cap (see Figure 2).

FEMA has implemented policies to limit overtime and ensure employees do not exceed pay caps. However, as demonstrated by our analysis, those policies did not prevent GS employees from forfeiting premium pay.

- According to FEMA’s Premium Pay Manual, supervisors should limit overtime and other work that would result in premium pay to the greatest extent possible by maintaining the necessary workforce to carry out FEMA’s mission. FEMA’s Premium Pay Manual also states care should be taken to deploy or employ adequate personnel to avoid extensive overtime hours when responding to disasters. FEMA could have relied on the SAE workforce, which has a higher annual pay cap, to meet surge overtime needs when

Figure 2. Reasons FEMA GS Employees Forfeited Premium Pay



Source: DHS OIG testing results



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responding to disasters. Instead, FEMA continued to use GS employees who had already reached the biweekly or annual pay caps.

- According to the FEMA OCHCO *HR Operations Payroll & Compensation SOP*, FEMA OCHCO will notify employees, their supervisors, and timekeepers when an employee is at risk of exceeding the annual pay cap. FEMA did not issue such notifications in 2021 because the agency noted it was using the higher COVID-19 annual pay cap. FEMA officials stated they sent out 131 notifications in 2022. However, we identified 75 employees in our sample who forfeited premium pay that year, and we project that up to 1,204 employees forfeited premium pay in 2021 or 2022.

Improved policies and increased communication by FEMA could have prevented up to an estimated \$4.0 million in forfeited premium pay in 2021 and 2022.

According to a FEMA official, forfeiting premium pay could have a negative impact on employee morale. Improved policies and increased communication by FEMA could have prevented employees from forfeiting up to an estimated \$4.0 million in premium pay in 2021 and 2022.

FEMA Did Not Promptly Distribute Premium Pay to SAEs

FEMA's *Incident Workforce Pay Setting Guide* does not cap SAE biweekly earnings. However, in 2021 and 2022 FEMA officials capped and deferred the biweekly earnings of 593 out of 898 (66 percent) and 582 out of 902 (65 percent), respectively, of SAEs who received premium pay. In one example, an SAE waited until the end of the year to receive \$44,650. In total, 1,175 SAEs waited until the end of the year to receive a total of \$2.7 million in capped earnings (see Table 7).

Table 7. FEMA SAEs Capped in 2021 and 2022

Year	Employee Analyzed	Employee		Year-End Distributions
		Biweekly Capped	Percentage	
2021	898	593	66%	\$ 496,440
2022	902	582	65%	\$ 2,230,478
Total	1,800	1,175	65%	\$ 2,726,918

Source: DHS OIG analysis of SAEs who received premium pay in 2021 or 2022



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FEMA officials explained that the component implemented a biweekly pay cap for SAEs to prevent them from exceeding their annual pay cap of \$230,700 and to apply a process consistent with that used for GS employees. However, we determined that FEMA did not use the maximum year-end limits to calculate biweekly pay caps for SAEs.

According to 5 C.F.R. § 550.106(d), *Annual maximum earnings limitation*, Federal officials must calculate biweekly pay caps for GS employees by:

- (1) dividing the applicable end-of-year published annual rate by 2,087 hours; and
- (2) multiplying the resulting hourly rate by 80 hours.

Instead of calculating a biweekly pay cap for SAEs using the year-end annual maximum of \$230,700, FEMA based its calculations from the pay rate for the Executive Schedule Level II. As a result, FEMA capped biweekly earnings for SAEs lower than what was necessary to avoid exceeding the annual caps, \$1,203 less in 2021 and \$1,035 less in 2022. Table 8 shows the difference between biweekly caps based on the SAE maximum year-end annual rate versus the Executive Schedule Level II annual rate.

Table 8. Difference Between SAE Biweekly Pay Caps

CY	SAE Maximum Biweekly Pay Cap	Senior Executive Level II Biweekly Pay Cap ¹⁰	Difference
2021	\$8,843	\$7,640	\$1,203
2022	\$8,843	\$7,808	\$1,035

Source: DHS OIG calculations based on 5 C.F.R. § 550.106(d), *Annual maximum earnings limitation*, and OPM's 2021–22 Executive Schedule salary tables.

Per a memorandum dated September 14, 2018, OCHCO planned to work with the National Finance Center to increase the biweekly pay cap for SAEs to \$8,843, consistent with the 5 C.F.R. § 550.106(d) calculation. However, FEMA canceled its request to the National Finance Center because officials determined increasing the biweekly pay cap would put SAEs at risk of hitting the annual pay cap of \$230,700 before the end of the year. FEMA could not provide documents to support its risk assessment, communication within FEMA regarding a policy decision to cap

¹⁰ The 2021 Executive Schedule Level II biweekly pay cap is calculated by dividing \$199,300 by 2,087 hours, then multiplying the result by 80 hours and 26 pay periods. The 2022 Executive Schedule Level II biweekly pay cap is calculated by dividing \$203,700 by 2,087 hours, then multiplying the result by 80 hours and 26 pay periods.



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SAEs' pay, or communication between FEMA and the National Finance Center related to increasing biweekly pay caps for SAEs.

From our analysis of SAE premium pay in 2021 and 2022, we confirmed that no SAEs exceeded the annual pay cap of \$230,700. In addition, we found that only 7 out of 1,800 (0.39 percent) reached that cap. Even though the risk of SAEs exceeding the annual pay cap was low, FEMA continued basing its SAE pay cap from the Executive Schedule Level II rates, and 1,175 SAEs did not have the opportunity to spend, save, or invest their earnings promptly.

Conclusion

FEMA OCHCO took corrective actions during our audit to update its Premium Pay SOP and addressed errors identified by our audit. However, FEMA OCHCO could do more to manage premium pay in compliance with Federal laws and regulations, limit employee forfeiture of premium pay, and issue premium pay to SAEs in a timely manner. Improved policies and communication could have prevented FEMA from overpaying GS employees an estimated \$397,000, underpaying other GS employees approximately \$594,000, and unreasonably delaying payments of \$2.7 million to SAEs during 2021 or 2022. We questioned the estimated \$397,000 in premium pay overpayments as ineligible costs (see Appendix C).

Recommendations

Recommendation 1: We recommend that the Chief Component Human Capital Officer for FEMA design and implement internal controls to accurately issue premium pay in accordance with Federal laws and regulations. Specifically, the Chief Component Human Capital Officer for FEMA should: (a) implement an automated quality review of its year-end process, including supervisory review; (b) provide the results of pay reconciliations to the affected employees; and (c) implement a process to accurately calculate employees' annual pay caps to ensure all employees receive premium pay in accordance with applicable laws and regulations.

Recommendation 2: We recommend that the Chief Component Human Capital Officer for FEMA conduct a formal year-end review of reconciliations completed in 2021 and 2022 to ensure employees received premium pay accurately in accordance with applicable laws and regulations. Additionally, FEMA's Office of the Chief Human Capital Officer should provide the reconciliations to the respective employees for transparency.

Recommendation 3: We recommend that the Chief Component Human Capital Officer for FEMA design and implement a process to prevent employees, to the extent possible, from forfeiting premium pay, including notifying employees when those employees are at risk of forfeiting compensation for either exceeding the biweekly pay cap working non-waived emergencies or disasters or exceeding the annual pay cap.



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Recommendation 4: We recommend that the Chief Component Human Capital Officer for FEMA design and implement a process to ensure Stafford Act employees are paid premium pay promptly.

Management Comments and OIG Analysis

FEMA provided management comments on a draft of this report. We included the comments in their entirety in Appendix B. We also received technical comments from FEMA on the draft report, and we revised the report as appropriate. FEMA concurred with all four of the recommendations, which we consider open and resolved. A summary of FEMA's responses to the recommendations and our analysis follows.

FEMA Response to Recommendation 1: Concur. In 2023, FEMA's OCHCO Payroll and Compensation Branch strengthened internal controls over the payment of deferred premium pay. Specifically, on November 16, 2023, the Payroll and Compensation Branch established a two-part quality review process for the year-end review of deferred premium pay, which includes an initial peer review and a second review by the Compensation Section Supervisor. This quality review process will also directly support FEMA OCHCO efforts to calculate employee annual pay caps accurately. In addition, the Payroll and Compensation Branch notifies employees via email when employees are nearing the annual premium pay cap for their locality. In 2023, the Payroll and Compensation Branch also committed to conducting a formal year-end review of all reconciliations completed in 2021 and 2022. Thus far, the Payroll and Compensation Branch has completed the review of all 2022 reconciliations and notified employees, issued funds for underpayments, and initiated collections for overpayments, as appropriate. The Payroll and Compensation Branch is currently reviewing 2021 reconciliations. Once complete, the results of the premium pay reconciliations for 2021 and 2022 will be provided to all affected employees. Estimated completion date (ECD): January 31, 2025.

OIG Analysis: FEMA's actions are responsive to the recommendation. This recommendation will remain open and resolved until we receive evidence FEMA implemented the quality review process to ensure the year-end reconciliations are accurate and that FEMA provided those year-end reconciliations to the respective employees for transparency.

FEMA Response to Recommendation 2: Concur. As previously noted, FEMA OCHCO's Payroll and Compensation Branch is conducting a formal year-end review of all reconciliations completed in 2021 and 2022. This review includes an additional quality review to ensure the accuracy of reconciliations and associated payments or collections. Thus far, the Payroll and Compensation Branch completed the review of all 2022 reconciliations and is currently reviewing 2021 reconciliations. Once the 2021 review is complete, the results of the premium pay reconciliations will be provided to all employees impacted in 2021 and 2022. ECD: January 31, 2025.



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OIG Analysis: FEMA's actions are responsive to the recommendation. This recommendation will remain open and resolved until we receive evidence FEMA completed the formal year-end review of the 2021 and 2022 reconciliations and provided those results to the respective employees for transparency.

FEMA Response to Recommendation 3: Concur. OCHCO's Payroll and Compensation Branch notifies employees at risk of nearing the annual pay cap for their locality and provides detailed instructions for employees on how to proceed. These communications are retained on the Payroll and Compensation Branch shared drive. In addition, a self-service tool is available to all employees on the FEMA intranet to help employees better estimate premium pay based on their respective grade, step, and locality.

FEMA takes steps to minimize the cost of premium pay in disasters and emergencies to the maximum extent practicable. However, it is also important to recognize that the FEMA mission is to reduce the loss of life and property and protect the nation from all hazards, which, in response to disasters or emergencies, often requires the use of overtime to allow FEMA personnel to take actions when and where they are needed in service of the mission. When an employee reaches the biweekly or annual premium pay cap, or their annual aggregate limitation of pay, the employee may nevertheless be ordered to perform work, including overtime, without receiving further compensation in accordance with guidelines on earning limitations for Federal workers. FEMA requests OIG consider this recommendation resolved and closed, as implemented.

OIG Analysis: FEMA's actions are responsive to the recommendation. This recommendation will remain open and resolved until we receive evidence FEMA notified the employees that were at risk of forfeiting compensation and until FEMA provides documentation of any other steps taken to minimize employees forfeiting premium pay.

FEMA Response to Recommendation 4: Concur. OCHCO will develop a plan of action to evaluate the benefits and risks associated with increasing the biweekly pay cap for SAEs, which is currently calculated based on the pay rate for the Executive Schedule Level II to reduce the likelihood of SAEs exceeding the annual pay cap. FEMA defers excess premium pay for both SAEs and GS employees to the end of the CY to avoid overpayments, in accordance with DHS Compensation Guidance. ECD: January 31, 2025.

OIG Analysis: FEMA's actions are responsive to the recommendation. This recommendation will remain open and resolved until we receive the results of FEMA's evaluation of the SAE biweekly pay cap.



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Appendix A: Objective, Scope, and Methodology

The Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Pub. L. No. 107-296) by amendment to the *Inspector General Act of 1978*.

We conducted this audit to determine whether FEMA complied with laws and regulations for premium pay to employees responding to disasters in 2021 and 2022. To accomplish our objective, we identified and reviewed Federal laws and regulations, DHS guidance, and FEMA policy and guidance for premium pay. We reviewed the following criteria:

- 5 U.S.C. § 5547
- 5 C.F.R. Part 550
- Stafford Act
- Pub. L. No. 116-260, *Consolidated Appropriations Act, 2021*
- Pub. L. No. 117-103, *Consolidated Appropriations Act, 2022*
- Pub. L. No. 116-136, *Coronavirus Aid, Relief, and Economic Security Act*
- DHS Compensation Guidance CG-1-2021
- FEMA Manual 253-2-1, *Premium Pay*, February 11, 2014
- *FEMA Premium Pay Standard Operating Procedure*, October 1, 2018
- FEMA's *Incident Workforce Pay Setting Guide*, November 7, 2017
- FEMA job aids

In addition, we reviewed prior DHS OIG and U.S. Government Accountability Office reports related to our objective. To gain an understanding of FEMA's authorization, approval, and management of premium pay, we interviewed FEMA officials, performed virtual walkthroughs, and conducted several meetings and data calls with FEMA OCHCO officials to reconcile sample item exceptions.

Our audit included analyzing WebTA data and FEMA OCHCO deferred premium pay tracking reports for CYs 2021 and 2022. To test whether FEMA GS employees received premium pay in accordance with laws and regulations, we selected a statistical sample of 324 employees¹¹ from a universe of 2,066 FEMA GS employees¹² who had premium pay deferred until the end of the year in 2021 or 2022. The team based the statistical sample on a 95 percent confidence level and 5 percent margin of error. The team used the results of the statistical sample testing to

¹¹ The sample contained 13 employees from both 2021 and 2022. We tested the 13 employees' 2021 and 2022 premium pay earnings separately.

¹² The tested universe consisted of mostly exempt GS employees because nonexempt employees' overtime does not have a biweekly or annual pay cap under 5 C.F.R. §§ 550.105 - 106. The tested universe contained 529 GS employees who appeared on both the 2021 and 2022 deferred premium pay tracking reports.



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make inferences on the 2,066 FEMA GS employees in the universe. Additionally, we analyzed WebTA data for 1,800 SAEs¹³ who had premium pay deferred until the end of the year in 2021 or 2022.

To assess the completeness and accuracy of premium pay data, we reviewed leave and earning statements; FLSA exemption status; and employees' SF-50s, *Notice of Personnel Action*. We performed detailed testing on the samples to reconcile the biweekly pay cap amounts, deferred premium pay, and FEMA payments to employees to determine whether employees were underpaid or overpaid, or whether they forfeited premium pay earnings. Further, we analyzed data for the SAEs to determine the amount of premium pay earnings capped and deferred. Except for the deficiencies noted in our report, we deemed the information sufficient and reliable to answer our audit objective.

We assessed FEMA's internal control structure, policies, procedures, and practices applicable to premium pay. We identified deficiencies in the internal control activities and monitoring internal control components. Our assessment would not necessarily disclose all significant deficiencies in this internal control structure. However, it disclosed deficiencies in FEMA's design and implementation of internal controls to ensure employees received premium pay in accordance with laws and regulations. We discuss these deficiencies in the body of this report.

We conducted this audit from August 2022 through October 2023 pursuant to the *Inspector General Act of 1978*, 5 U.S.C. §§ 401–424, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

DHS OIG's Access to DHS Information

During this audit, FEMA delayed our access to the information we requested. We requested access to FEMA's Deployment Tracking System database and to the database containing employee earnings and leave records in September 2022. FEMA denied access to these systems, stating it was awaiting approval from the Departmental Audit Liaison Office. After several data requests and meetings with FEMA representatives to obtain complete and accurate data, FEMA ultimately provided a usable dataset in February 2023.

¹³ The WebTA data analyzed contained 875 SAEs who had premium pay deferred at the end of both 2021 and 2022.



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Appendix B: FEMA Comments on the Draft Report

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



FEMA

BY ELECTRONIC SUBMISSION

September 30, 2024

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

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

CYNTHIA
SPISHAK

Digitally signed by
CYNTHIA SPISHAK
Date: 2024.09.30 15:04:15
-04'00'

SUBJECT: Management Response to Draft Report “FEMA Did Not Fully Comply with Premium Pay Laws and Regulations” (Project No. 22-050-AUD-FEMA)

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 and conducting its review and issuing this report.

FEMA leadership is pleased to note OIG’s positive recognition of FEMA’s efforts to strengthen internal controls over premium pay. FEMA worked diligently to implement additional quality controls and oversight of the premium pay process since issuance of OIG’s previous report.¹ In addition, FEMA is reviewing year-end reconciliations from 2021-2022 to ensure employees were appropriately compensated. FEMA remains committed to the support of FEMA’s workforce and proper compensation of all employees who work overtime hours responding to disasters.

However, FEMA leadership takes exception to OIG’s inaccurate and misleading claims that FEMA delayed or denied access to FEMA’s Deployment Tracking System (DTS) database and to the database containing employee earnings and leave records in September 2022. The OIG’s initial request for access to DTS was made on August 30, 2022, only four days after the Department was first notified of this audit on August 26, 2022, and nearly three weeks before FEMA and OIG first met to discuss the new audit at the Entrance Conference on September 16, 2022. As experts on the DTS system and data, FEMA must ensure there is accurate representation and understanding of any information queried, pulled, and used. OIG’s request for back-end data, in advance of the

¹ OIG-18-71, “FEMA Paid Employees Over the Annual Premium Pay Cap,” dated July 31 2018; <https://www.oig.dhs.gov/reports/2018/fema-paid-employees-over-annual-premium-pay-cap/oig-18-71-jul18>



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FEMA program's opportunity to meet with the OIG to understand specific data needs and provide the appropriate training accordingly, placed unnecessary risk to the DTS system in which an untrained analyst with backend access could have, and likely would have, created insufficient queries resulting in reduced system performance and/or outages for mission-related reporting, while additionally creating opportunities to potentially misinterpret and/or misunderstand the data.

At the Entrance Conference, OIG reiterated the request for access to DTS,² and also requested access to employee databases that contain accounting and payroll data, i.e., the National Finance Center's (NFC) Reporting Center and WebTA.³ Because FEMA is a third-party user of the NFC Reporting Center and WebTA systems, FEMA immediately sought guidance from the Departmental Audit Liaison Office (DAL) concerning OIG's request, but did not inappropriately deny or delay access to OIG. Taking an appropriate amount of time to understand and reach an accommodation on information technology (IT) system data access requests should not be viewed as a denial or delay. Also, any assertion that FEMA was "awaiting approval" from the DAL was misinformed, as the DAL does not make decisions about access to DHS IT systems.

Further, OIG's allegation that FEMA delayed providing an extract of data until February 2023 is also inaccurate. Several times in September 2022, FEMA requested OIG provide clarification on what specific data OIG needed from DTS to conduct work on this audit. On October 27, 2022, almost two months after OIG's initial request, OIG responded with a detailed data request. One day later, on October 28, 2022, FEMA's Field Operations Directorate provided an initial extract of requested DTS data to OIG. However, the remaining data fully responding to OIG's October 27, 2022 request was provided on November 14, 2022, as OIG experienced challenges receiving large file sizes and a new file transferring system had to be implemented. Following this, FEMA continued to promptly provide all subsequent data requests to OIG through March 2023. Even as specifics of OIG's requests changed multiple times, FEMA's Field Operations Directorate in conjunction with FEMA's Office of the Chief Human Capital (OCHCO) remained flexible and devoted significant time to meeting with OIG as needed to clarify data requests, data limitations, system limitations, and to fulfill any new data requests from OIG. To allege that FEMA denied or delayed providing information to OIG at any time is incorrect.

OIG's statements also do not appropriately account for a significant delay created by OIG's July 18, 2023, request to GAO asking for a legal decision regarding whether FEMA appropriations were available to make payments for premium pay beyond the

² Managed by FEMA's Field Operations Directorate, which administers contract, financial management, system privacy, security, and record-keeping, and management of the system enhancements, interconnections, and information.

³ A web-based time and attendance system used to submit time and leave information to the Department's payroll/personnel service provider, the National Finance Center, for salary payment.



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authorized statutory maximum. On July 23, 2024, the GAO provided a letter to OIG with their response that the Office of Personnel Management agreed with DHS's interpretation that section 303 of the Coronavirus Response and Relief Supplemental Appropriations Act of 2021 was available to DHS, applied to FEMA employees, and provided specific statutory authority to exceed the caps for covered employees.⁴ Once GAO provided their response, OIG was able to resume their audit after a yearlong delay.

It is disappointing that OIG's draft report does not more accurately describe the full breadth and extent of the assistance FEMA provided, which was balanced with FEMA's responsibilities to both be responsive to OIG requests for information and safeguard information in DHS IT systems, including personally identifiable information (PII) or sensitive PII.

The draft report contained 4 recommendations with which FEMA concurs. Attached find our detailed response to each recommendation. FEMA previously submitted technical comments addressing several accuracy, contextual, and other issues under a separate cover for OIG's consideration, as appropriate.

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.

Attachment

⁴ "B-335613 – Letter to Counsel for DHS IG Regarding FEMA Premium Pay." July 23, 2024



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Attachment: Management Response to Recommendations Contained in OIG 22-050-AUD-FEMA

OIG recommended the Chief Component Human Capital Officer for FEMA:

Recommendation 1: Design and implement internal controls to accurately issue premium pay in accordance with Federal laws and regulations. Specifically, the Chief Component Human Capital Officer for FEMA should: (a) implement an automated quality review of its year-end process including supervisory review; (b) provide the results of pay reconciliations to the affected employees; and (c) implement a process to accurately calculate employees' annual pay caps to ensure all employees receive premium pay in accordance with applicable laws and regulations.

Response: Concur. In 2023, FEMA's OCHCO Payroll and Compensation Branch strengthened internal controls over the payment of deferred premium pay. Specifically, on November 16, 2023, the Payroll and Compensation Branch established a two-part quality review process for the year-end review of deferred premium pay, which includes an initial peer review and a second review by the Compensation Section Supervisor. This quality review process will also directly support FEMA OCHCO efforts to calculate employee annual pay caps accurately. In addition, the Payroll and Compensation Branch notifies employees via email when employees are nearing the annual premium pay cap for their locality. In 2023, the Payroll and Compensation Branch also committed to conducting a formal year-end review of all reconciliations completed in 2021 and 2022; and thus far completed the review of all 2022 reconciliations and notified employees, issued funds for underpayments, and initiated collections for overpayments, as appropriate. The Payroll and Compensation Branch is currently reviewing 2021 reconciliations. Once complete, the results of the premium pay reconciliations for 2021-2022 will be provided to all affected employees.

Estimated completion date (ECD): January 31, 2025.

Recommendation 2: Conduct a formal year-end review of reconciliations completed in 2021 and 2022 to ensure employees received premium pay accurately in accordance with applicable laws and regulations. Additionally, FEMA's Office of the Chief Human Capital Officer should provide the reconciliations to the respective employees for transparency.

Response: Concur. As previously noted, FEMA OCHCO's Payroll and Compensation Branch is conducting a formal year-end review of all reconciliations completed in 2021 and 2022. This review includes an additional quality review to ensure the accuracy of reconciliations and associated payments or collections. Thus far, the Payroll and Compensation Branch completed the review of all 2022 reconciliations and is currently



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reviewing 2021 reconciliations. Once the 2021 review is complete, the results of the premium pay reconciliations will be provided to all employees impacted in 2021-2022.

ECD: January 31, 2025.

Recommendation 3: Design and implement a process to prevent employees, to the extent possible, from forfeiting premium pay, including notifying employees when those employees are at risk of forfeiting compensation for either exceeding the biweekly pay cap working non-waived emergencies or disasters or exceeding the annual pay cap.

Response: Concur. OCHCO's Payroll and Compensation Branch notifies employees at risk of nearing the annual pay cap for their locality, and provides detailed instructions for employees on how to proceed. These communications are retained on the Payroll and Compensation Branch shared drive. In addition, a self-service tool is available to all employees on the FEMA intranet to help employees better estimate premium pay based on their respective grade, step, and locality.

FEMA takes steps to minimize the cost of premium pay in disasters and emergencies to the maximum extent practicable. However, it is also important to recognize that the FEMA mission is to reduce the loss of life and property and protect the nation from all hazards which, in response to disasters or emergencies, often requires the use of overtime to allow FEMA personnel to take actions when and where they are needed in service of the mission. When an employee reaches the biweekly or annual premium pay cap, or their annual aggregate limitation of pay, the employee may nevertheless be ordered to perform work, including overtime, without receiving further compensation in accordance with guidelines on earning limitations for federal workers.^{5, 6, 7, 8}

FEMA requests OIG consider this recommendation resolved and closed, as implemented.

Recommendation 4: Design and implement a process to ensure Stafford Act employees are paid premium pay promptly.

Response: Concur. OCHCO will develop a plan of action to evaluate the benefits and risks associated with increasing the biweekly pay cap for Stafford Act employees (SAE),

⁵ Comptroller General of the United States Opinion B-178117, dated May 1, 1973;
<https://www.gao.gov/products/b-178117>

⁶ Comptroller General of the United States Opinion B-229089, dated December 28, 1988;
<https://www.gao.gov/products/b-229089-0>

⁷ Comptroller General of the United States Opinion B-240200, dated December 20, 1990;
[https://www.gao.gov/products/b-](https://www.gao.gov/products/b-240200#:~:text=The%20statute%20provides%20that%20an,does%20not%20cause%20the%20employee%27s)

[240200#:~:text=The%20statute%20provides%20that%20an,does%20not%20cause%20the%20employee%27s](https://www.gao.gov/products/b-240200#:~:text=The%20statute%20provides%20that%20an,does%20not%20cause%20the%20employee%27s)
⁸ Office of Personnel Management "Premium Pay Limitations in 2024"
<https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration?url=Biweekly-Caps>



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which is currently calculated based on the pay rate for the Executive Schedule Level II to reduce the likelihood of SAEs exceeding the annual pay cap. FEMA defers excess premium pay for both SAE and GS employees to the end of the calendar year to avoid overpayments, in accordance with DHS Compensation Guidance.⁹

ECD: January 31, 2025.

⁹ CG-1-2021, "Deferring Premium Pay of Additional Premium Pay When an Annual Premium Pay Cap Applies," dated May 17, 2021.



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Appendix C: Potential Monetary Benefits

Premium Pay	Unsupported Costs Questioned	Ineligible Costs Questioned	Total Questioned Costs	Funds to Be Put to Better Use	Rec No.
FEMA overpayments beyond the statutory Pay Caps	\$0	\$396,776	\$396,776	\$0	2
Totals	\$0	\$396,776	\$396,776	\$0	N/A

Source: DHS OIG statistical inferences based on sample testing results



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Appendix D: Report Distribution

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