



OFFICE OF THE SECRETARY

FY 2011 Compliance with Improper Payment Requirements

FINAL REPORT OIG-12-022-I
MARCH 15, 2012

U.S. Department of Commerce
Office of Inspector General
Office of Audit and Evaluation

For Public Release



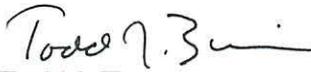


UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
Washington, D.C. 20230

March 15, 2012

MEMORANDUM FOR: The Honorable John E. Bryson

FROM:


Todd J. Zinser

SUBJECT:

FY 2011 Compliance with Improper Payment Requirements
Final Report No. OIG-12-022-1

This memorandum provides our final report on FY 2011 improper payment reporting. We conducted this review to comply with the requirements of the Improper Payments Elimination and Recovery Act of 2010 (IPERA) and Office of Management and Budget Circular A-123, Appendix C.

Our review focused on determining whether the Department's improper payment reporting in Appendix F of its FY 2011 *Performance and Accountability Report* complied with Improper Payments Information Act of 2002 (IPIA), as amended by IPERA. We also evaluated the accuracy and completeness of the Department's reporting, as well as its performance in reducing and recapturing improper payments.

Overall, we found that the Department was in compliance with IPIA requirements for FY 2011. However, we determined that the Department's improper payment implementation strategy related to payments without sufficient documentation and payment recapture audits can be improved. Our report contains two recommendations to address these conditions.

In accordance with Department Administrative Order 213-5, we request an action plan within 60 days of the date of this memorandum from the Office of the Secretary that responds to our recommendations.

We are also issuing a copy of this report to the Senate Committee on Homeland Security and Governmental Affairs; House Committee on Oversight and Government Reform; Comptroller General of the United States; Acting Director, Office of Management and Budget; and Comptroller, Office of Management and Budget.

We would like to thank the Department's staff and management for its cooperation during our review. Please contact me at (202) 482-4661, if you would like to discuss the results of this review.

Attachment



**cc: Scott B. Quehl, Chief Financial Officer and Assistant Secretary for Administration
Lisa Casias, Deputy Chief Financial Officer and Director for Financial Management
Gordon Alston, Deputy Director for Financial Management
Julie Tao, Director for Internal Controls
Peter P. Petrianni, Audit Liaison**



Report In Brief

MARCH 15, 2012

Background

Improper payments are those made by the federal government in the wrong amount, to the wrong entity, or for the wrong reason. Federal agencies reported estimated improper payments of more than \$115 billion (approximately 5 percent of outlays) for FY 2011.

The **Improper Payments Information Act of 2002** (IPIA) requires federal agencies to (1) identify programs susceptible to improper payments; (2) estimate improper payment amounts for such programs; and (3) report these estimates, along with actions taken to reduce improper payments for programs with estimates that exceed \$10 million in improper payments. The **Improper Payments Elimination and Recovery Act of 2010** (IPERA) amended IPIA by expanding on the previous requirements for identifying, estimating, and reporting on programs and activities which were vulnerable to significant improper payments and broadening recovery requirements for overpayments.

Why We Did This Review

We initiated this engagement to review the Department's compliance with IPIA—as required by the Office of Management and Budget's (OMB's) government-wide implementation guidance, Circular A-123, *Management's Responsibility for Internal Controls*, Appendix C, "Requirements for Effective Measurement and Remediation of Improper Payments." Specifically, we (1) assessed whether the Department complied with all reporting requirements and (2) evaluated the accuracy and completeness of its reporting as well as its performance in reducing and recapturing improper payments.

OFFICE OF THE SECRETARY

FY 2011 Compliance with Improper Payment Requirements

OIG-12-022-1

WHAT WE FOUND

To comply with IPIA and OMB Circular A-123, Appendix C, the Department implemented procedures in FY 2011 to detect and prevent improper payments—conducting program risk assessments, reviewing a sample of FY 2011 disbursements, performing payment recapture audits, and conducting routine monitoring procedures. These assessments revealed no programs or activities susceptible to significant risk of improper payments.

In addition, the Department's review did not identify any significant improper payments. The Department's routine monitoring efforts identified \$3.5 million in overpayments in FY 2011, most of which it recaptured. Based on these activities, we found the Department to be in compliance. The Department has also completed implementation of corrective actions to address the recommendations issued in our March 2011 report on improper payment practices and reporting. A summary of the Department's relevant FY 2011 practices and results appear in appendix F of the U.S. Department of Commerce FY 2011 *Performance and Accountability Report (PAR)*.

While the Department was in compliance with IPIA requirements for FY 2011—and successfully addressed recommendations from our March 2011 report—we determined that the Department could improve improper payment implementation strategy related to:

- **Payment recapture audits.** In reviewing the Department's November 2011 contractor report on payment recapture audits, we noted that 6 of 34 grants reviewed at one bureau were closed several years after the last disbursement. Because the Department excludes grants and contracts not officially closed out from the Department's payment recapture audits, we believe there is a risk that the unaudited population contains improper payments that will proceed undetected until subjected to the closeout process.
- **Payments without sufficient documentation.** The Department's contractor—unable to obtain adequate documentation in a timely manner to determine whether erroneous payments were made for 3 of 4 grants for one smaller Department bureau and 13 of 19 grants for another similarly-sized bureau—could not reach a conclusion. OMB requires that payments made under these types of grants be considered improper payments. However, the Department did not report the payments made pursuant to these grants as improper in its *PAR*.

WHAT WE RECOMMEND

We recommend that the Department:

1. expand the scope of its review of grants and contracts to include those for which the period of performance ended and last payment was made, but for which the closeout process has not been completed; and
2. research items identified in payment recapture audits as lacking sufficient documentation, and report amounts in its annual *Performance and Accountability Report* when unable to discern propriety of payment.

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*COVER: Detail of fisheries pediment,
U.S. Department of Commerce headquarters,
by sculptor James Earle Fraser, 1934*

Introduction

Broadly defined, *improper payments* are those made by the federal government in the wrong amount, to the wrong entity, or for the wrong reason.¹ Federal agencies reported that improper payments were estimated at over \$115 billion (approximately 5 percent of outlays) for FY 2011.

Congress enacted the Improper Payments Information Act of 2002 (IPIA) to encourage agency management to plan and take actions to reduce such payments. It requires federal agencies to (1) identify programs that were susceptible to improper payments, (2) estimate improper payment amounts for such programs, and (3) report these estimates along with actions taken to reduce improper payments for programs with estimates that exceed a certain percentage of disbursements and \$10 million. The Improper Payments Elimination and Recovery Act of 2010 (IPERA) amended IPIA² by expanding on the previous requirements for identifying, estimating, and reporting on programs and activities which were vulnerable to significant improper payments³ and broadening recovery requirements for overpayments.

During fiscal year 2011, the Department made approximately \$14 billion in total outlays. As mandated by IPIA, the Department implemented various policies and procedures intended to detect and prevent significant improper payments. Overall, the Department identified no significant improper payments in its programs and activities. A summary of the Department's FY 2011 improper payment practices and results appear in appendix F of the *U.S. Department of Commerce FY 2011 Performance and Accountability Report (PAR)*.

We initiated this engagement to review the Department's compliance with IPIA. We focused on the Department's efforts to calculate, disclose, reduce, and—when appropriate—recapture improper payments accurately, as required by the Office of Management and Budget's (OMB's) government-wide implementation guidance, Circular A-123, *Management's Responsibility for Internal Controls*, Appendix C, "Requirements for Effective Measurement and Remediation of Improper Payments." Specifically, we (1) assessed whether the Department complied with all reporting requirements and (2) evaluated the accuracy and completeness of its reporting as well as its performance in reducing and recapturing improper payments.

¹ According to the Improper Payments Elimination and Recovery Act of 2010, or "IPERA," (Public Law 111-204), an *improper payment* is any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements. It includes any payment (a) to an ineligible recipient, (b) for an ineligible good or service, (c) that is duplicate, and (d) that does not account for credit for applicable discounts.

² Unless otherwise indicated, the term "IPIA" will imply "IPIA, as amended by IPERA" throughout this report.

³ IPIA defines *significant improper payment* as improper payments exceeding (a) 2.5 percent of program payments and \$10 million or (b) \$100 million. OMB further established additional requirements related to federal agency management accountability, recovery auditing, compliance/noncompliance determination through an inspector general assessment, and maintaining sufficient internal controls related to improper payments.

We found that the Department was in compliance with IPIA, as described in table I. However, we also identified two areas for further improvement. We believe that the Department should expand the scope of its payment recapture audits. Additionally, the Department's improper payment reporting should include items where the Department was unable to reach a conclusion on propriety of payment.

Table I. Improper Payment Reporting Requirements

| Requirement | Commerce Compliance |
|--|---------------------|
| Published the <i>PAR</i> and posted on agency website | Yes |
| Conducted program-specific risk assessments | Yes |
| Published improper payment estimates for all programs and activities identified as susceptible to significant improper payments in the <i>PAR</i> | a |
| Published programmatic corrective action plans for all programs and activities susceptible to significant improper payments in the <i>PAR</i> | a |
| Published and met annual reduction targets for each program assessed to be at risk and measured for all programs and activities susceptible to significant improper payments in the <i>PAR</i> | a |
| Reported a gross improper payment rate of less than 10 percent for each program/activity for which a significant improper payment estimate was obtained and published in the <i>PAR</i> | a |
| Reported information on its efforts to recapture improper payments in the <i>PAR</i> | Yes |

Source: OIG analysis of Department data

^a The Department determined that it does not have any programs or activities susceptible to the risk of significant improper payments (i.e., exceeding either 2.5 percent of program payments and \$10 million or \$100 million); therefore, this requirement is not applicable.

Findings and Recommendations

Improper Payment Elimination Practices Are Compliant, but Further Improvements Are Needed

To meet the requirements of IPIA and OMB Circular A-123, Appendix C, the Department implemented procedures in FY 2011 to detect and prevent improper payments. It conducted program risk assessments, reviewed a sample of FY 2011 disbursements,⁴ performed payment recapture audits for closed contracts/obligations and grants/other cooperative agreements, and conducted routine monitoring procedures. The results of these assessments revealed no programs or activities susceptible to risk of significant improper payments. In addition, the Department's review of disbursements and payment recapture audits did not identify any significant improper payments. The Department's routine monitoring efforts—such as postpayment reviews, closeout reviews, and settlements—identified \$3.5 million in overpayments in FY 2011, most of which it recaptured. Based on these activities, we found the Department to be in compliance with IPIA.

The Department has also implemented corrective actions to address the following recommendations issued in our March 2011 report on improper payment practices and reporting:⁵

- Provide bureaus with additional guidance and training to identify the improper payments categories, and ensure that all categories are accurately and completely reported;
- Include grant payments in future recovery audits; and
- Expand internal control and program risk assessment to include specific fraud scenarios.

The bureaus now report additional categories of improper payments including the results of OIG audits and reviews, single audits, and contract and grant closeout reviews. The bureaus' risk assessment processes now include the consideration of fraud risk scenarios. The Department also expanded the scope of its payment recapture audits to include grants and other cooperative agreements disbursements—and hired a contractor to assist in the review of closed grants, cooperative agreements, and contracts.

While the Department was in compliance with IPIA requirements for FY 2011 and successfully addressed OIG recommendations, we determined that the Department could

⁴ The review included disbursements greater than \$100,000. Not included in the review were grants, cooperative agreements, travel payments, bank/purchase card payments, procurement vehicles with other federal agencies, government bills of lading, and gifts and bequests.

⁵ OIG Final Report No. OIG-11-021-A, *Commerce Needs to Strengthen Its Improper Payment Practices and Reporting*.

improve improper payment implementation strategy related to payment recapture audits and payments without sufficient documentation.

I. The Department Should Expand Its Payment Recapture Audit Scope

In reviewing the Department's November 2011 contractor report on the payment recapture audits, we noted that 6 of 34 grants reviewed at one bureau were closed several years after the last disbursement. The Department and bureaus acknowledged that they do not always perform timely closeout reviews for grants⁶ and contracts. Because the Department excludes grants and contracts that are not officially closed out from the Department's payment recapture audits, we believe that there is a risk that the unaudited population contains improper payments that will proceed undetected until subjected to the closeout process. Until the Department improves the efficiency of the closeout process, the recapture audit scope should be expanded to mitigate the potential for improper payments going undetected due to the closeout backlog. By waiting for the closeout process to occur, the Department might not be identifying and recapturing improper payments quickly enough.

Recommendation

We recommend that the Department:

- I. Expand the scope of its review of grants and contracts to include those for which the period of performance ended and last payment was made, but for which the closeout process has not been completed.

II. Improper Payment Reporting Should Include Payments Lacking Sufficient Documentation

We also noted that the contractor hired to help with the review was unable to obtain adequate electronic documentation from the grants system to determine whether or not erroneous payments were made for 3 of 4 grants for one smaller Department bureau and 13 of 19 grants for another similarly-sized bureau. According to the Department, the contractor did not reach a conclusion on these grants because manual documentation could not be located in a reasonable amount of time. OMB Circular A-123, Appendix C, requires that, when an agency's review is unable to discern whether a payment was proper as a result of lack of documentation, it should be considered an improper payment. The Department did not report the payments made pursuant to these grants as improper in its PAR.

⁶ Immediately following the expiration of an award, the Department should ensure that activity is complete and that the Department and the recipient have met all requirements imposed by applicable laws, regulations, OMB circulars, and award terms and conditions.

Recommendation

We recommend that the Department:

2. Research items identified in payment recapture audits as lacking sufficient documentation, and report amounts as improper payments in its annual *Performance and Accountability Report* when unable to discern propriety of payment.

Summary of Agency and OIG Comments

We reviewed the Department's response, included in Appendix B, and considered the Department's comments in preparing the final report. Overall, the Department was pleased that our office found the Department in compliance with IPIA, and provided a summary of its planned approach to address the recommendations in our report.

We look forward to reviewing the Department's corrective action plan to address our report recommendations.

Appendix A: Objectives, Scope, and Methodology

As required by the Office of Management and Budget's (OMB's) government-wide guidance on detecting and preventing improper payments—Circular A-123, *Management's Responsibility for Internal Controls*, Appendix C, “Requirements for Effective Measurement and Remediation of Improper Payments”—we initiated this review to determine whether the Department complied with the Improper Payments Information Act of 2002 (IPIA), as amended by the Improper Payments Elimination and Recovery Act of 2010 (IPERA). Specifically, our objectives were to (1) assess whether the Department complied with all reporting requirements and (2) evaluate the accuracy and completeness of its reporting as well as its performance in reducing and recapturing improper payments. Our scope included all departmental practices for assessing and identifying programs and activities susceptible to improper payments, along with procedures in place to detect and prevent improper payments, during FY 2011.

To meet our objective, we obtained an understanding of internal controls and practices by:

- interviewing the Department's Office of Financial Management, as well as contractor representatives, to gain an understanding of risk assessment, disbursement, and improper payment recapture processes;
- requesting, obtaining and analyzing documents related to the risk assessment, disbursement, and improper payment recapture processes, including relevant policies and procedures and reports; and
- reviewing “Appendix F: Improper Payments Information Act, as Amended, Reporting Details,” of the *U.S. Department of Commerce FY 2011 Performance and Accountability Report*.

We also reviewed the Department's compliance with applicable provisions of IPIA and OMB Circular A-123, Appendix C.

We conducted our field work from December 2011 to February 2012 in Washington, DC. We performed this review under authority of the Inspector General Act of 1978, as amended, and Department Organization Order 10-13, August 31, 2006. The review was conducted in accordance with the Quality Standards for Inspection and Evaluation (January 2011) issued by the Council of the Inspectors General on Integrity and Efficiency.

Appendix B: Agency Response

MAR 14 2012



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

MEMORANDUM FOR Ann C. Eilers
Principal Assistant Inspector General
for Office of Audit and Evaluation

FROM: Lisa Casias *L. Casias*
Deputy Chief Financial Officer and
Director for Financial Management

SUBJECT: Comments on the Draft Report Entitled, "*Office of the Secretary FY 2011 Compliance with Improper Payment Requirements*"

This memorandum responds to the draft report from the Office of Inspector General (OIG), entitled "Office of the Secretary FY 2011 Compliance with Improper Payment Requirements" (i.e., the report), issued on March 9, 2012. I am pleased the report stated the Department is in compliance with the Improper Payments Information Act of 2002, as amended by Improper Payments Elimination and Recovery Act of 2010.

Relating to recommendation #1, the Department will revisit its process and reach out to other agencies to determine the most efficient approach regarding expanding the scope of our review to grants and contracts not yet closed. Relating to recommendation #2, A-123 requires including items as improper payments due to lack of documentation. In this instance, manual documentation was not readily available in the automated system; for timeliness and efficiency reasons, obtaining manual documentation was not pursued. We agree the contractor should have pursued obtaining manual documentation for the grants which did not have adequate electronic documentation. During our next payment recapture audit, we will request the additional documentation for these items. For future payment recapture audits, the Department will review its process to ensure that documentation will be available in a reasonable amount of time; if documentation is not reasonably available, we will consider the circumstances for inclusion in improper payments reporting.

Thank you for the opportunity to provide comments. If you have any questions or comments, please feel free to call me at (202) 482-1207.