OFFICE OF THE SECRETARY

FY 2012 Compliance with Improper Payment Requirements

FINAL REPORT NO. OIG-13-020-I

MARCH 15, 2013

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, 2013

MEMORANDUM TO THE DEPUTY SECRETARY

FROM: Todd J. Zinser

SUBJECT: *FY 2012 Compliance with Improper Payment Requirements*
Final Report No. OIG-13-020-I

This memorandum provides our final report on FY 2012 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 (OMB) Circular A-123, Appendix C.

Our review focused on determining whether the Department's improper payment reporting in Appendix E of its FY 2012 *Performance and Accountability Report* complied with the Improper Payments Information Act of 2002, 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 met the applicable OMB criteria for compliance with the Improper Payments Information Act of 2002, as amended by IPERA, for FY 2012. However, we determined that the Department could further improve improper payment implementation strategy related to payments made without sufficient documentation. Our report contains one recommendation to address this condition.

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

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; Director, OMB; and Controller, OMB.

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: Ellen Herbst, Senior Adviser to the Deputy Secretary
Lisa Casias, Deputy Chief Financial Officer and Director for Financial Management
Gordon Alston, Director for Financial Reporting and Internal Controls
Julie Tao, Director for Internal Controls
MaryAnn Mausser, Audit Liaison

Report In Brief

MARCH 15, 2013

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 almost $108 billion (more than 4 percent of outlays) for FY 2012.

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.

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OIG-13-020-I

WHAT WE FOUND

To comply with IPIA and OMB Circular A-123, Appendix C, the Department implemented procedures in FY 2012 to detect and prevent improper payments—conducting program risk assessments, reviewing a sample of FY 2012 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 among its approximately $14.8 billion in outlays. The Department's routine monitoring efforts in FY 2012 identified almost $1.2 million in improper payments, of which more than $1 million was confirmed by the Department as recaptured. Based on these activities, we found the Department to be in compliance. The Department has also implemented corrective actions to address some of the issues identified in our March 2012 report on improper payment practices and reporting. A summary of the Department's relevant FY 2012 practices and results appear in the U.S. Department of Commerce FY 2012 *Performance and Accountability Report (PAR)*.

While the Department met the applicable compliance requirements for FY 2012, we determined that the Department could further improve its improper payment implementation strategy related to ***payments made without sufficient documentation***. An OIG audit found that the Department paid more than $300,000 in award fees without proper justification for one contract. This amount was considered an unsupported cost. Any such payment made without sufficient documentation to determine propriety represents an improper payment. However, this amount was not included in the Department's FY 2012 improper payment reporting in the *PAR*.

WHAT WE RECOMMEND

We recommend that the Department identify items that lack sufficient documentation from OIG audits and reviews of its programs and activities—and report the unsupported costs related to those items as improper payments in its annual *PAR*.

Contents

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

Introduction

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).

Broadly defined, *improper payments* are those the federal government has made in the wrong amount, to the wrong entity, or for the wrong reason.[1] Federal agencies reported that improper payments were estimated at almost $108 billion (approximately 4.4 percent of outlays) for fiscal year (FY) 2012.

Congress enacted 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 $10 million. IPERA amended IPIA[2] by expanding on these previous requirements[3] and broadening recovery requirements for overpayments.

During FY 2012, the Department made approximately $14.8 billion in total outlays. As mandated by IPIA, the Department implemented various internal controls intended to detect and prevent significant improper payments. As a result, the Department identified no programs and activities that may be susceptible to significant improper payments and reported $1,176,000 in improper payments which were identified through its ongoing improper payment monitoring and minimization efforts. A summary of the Department's FY 2012 improper payment practices and results appears in appendix E of the *U.S. Department of Commerce FY 2012 Performance and Accountability Report* (*PAR*).

[1] According to 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 under payments) under statutory, contractual, administrative, and other legally applicable requirements. It includes any payment (1) to an ineligible recipient, (2) for an ineligible good or service, (3) that is duplicate, (4) for a good or service not received, and (5) that does not account for credit for applicable discounts.

[2] Going forward, unless otherwise indicated, the term *IPIA* will denote *IPIA, as amended by IPERA* throughout this report.

[3] IPIA defines *significant improper payments* as exceeding (1) 2.5 percent of program outlays and $10 million of all program or activity payments made during the fiscal year or (2) $100 million. OMB further established additional requirements related to federal agency management accountability, recovery auditing, compliance determination through inspector general assessment, and maintaining sufficient internal controls related to improper payments.

Objectives, Findings, and Recommendations

Our review focused on the Department's efforts to calculate, disclose, reduce, and—when appropriate—recapture improper payments accurately, as required by OMB's Circular A-123. 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.

We found that the Department met the three applicable OMB criteria for compliance with IPIA, as described in table 1 (below). However, we believe that the Department should improve its improper payment reporting by including payments lacking sufficient documentation.

Table 1: Improper Payment Reporting Requirements

Requirement	Department Compliance
Published the *PAR* 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 *PAR*	a
Published programmatic corrective action plans for all programs and activities susceptible to significant improper payments in the *PAR*	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 *PAR*	a
Reported a gross improper payment rate of less than 10 percent for each program or activity for which a significant improper payment estimate was obtained and published in the *PAR*	a
Reported information on its efforts to recapture improper payments in the *PAR*	Yes

Source: OIG analysis of Departmental 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.

Improper Payment Elimination Practices Are Compliant with IPIA, but Further Improvement Is Needed

To meet the requirements of IPIA and OMB Circular A-123, Appendix C, the Department performed procedures in FY 2012 to detect and prevent improper payments. It:

- Conducted program risk assessments
- Evaluated a sample of FY 2012 disbursements[4]
- Performed payment recapture reviews for
    - Closed and expired[5] contracts and obligations and
    - Closed and expired grants and other cooperative agreements
- Reviewed sustained disallowed costs for appropriateness
- Conducted routine monitoring procedures
- Disclosed required data in the *PAR*

The results of these assessments revealed no programs or activities susceptible to risk of significant improper payments. In addition, the Department's review of FY 2012 disbursements and payment recapture audits did not identify any significant improper payments. The Department's routine monitoring efforts identified almost $1.2 million in improper payments in FY 2012, of which more than $1 million was confirmed by the Department as recaptured. Based on these activities, we found the Department to be in compliance with IPIA.

The Department has also implemented corrective actions to address some of the issues identified in our March 2012 report on improper payment practices and reporting:[6]

- Expand the scope of the Department's 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
- Research items identified in payment recapture audits as lacking sufficient documentation, and report amounts as improper payments in its annual *PAR* when unable to discern propriety of payment

The Department broadened the scope of their recapture work by (1) including grants in their recapture audits starting in FY 2011 and (2) expanding the contractor-performed recapture work in FY 2012 to include reviews of grants and contracts where the periods of performance had ended and last payments were made, but had not been fully closed out. Also, for items that contractors identified as lacking sufficient documentation during the prior year's payment recapture review, the Department requested additional documentation and these items were re-examined during the current year's review.

[4] The review included disbursements made between October 2011 and June 2012 which were greater than $5,000. Not included in the review for FY 2012 were intragovernmental transactions, payments to employees, travel payments, bank/purchase cards, government bills of lading, grants, loans, and gifts and bequests.

[5] "Closed" refers to items for which the closeout process has been completed; "expired" refers to items for which the period of performance has ended, and last payment was made, but for which the closeout process has not been completed.

[6] U.S. Department of Commerce Office of Inspector General. March 15, 2012. *FY 2011 Compliance with Improper Payment Requirements*, OIG-12-022-I. Washington, DC: DOC OIG.

The FY 2012 payment recapture review identified several grants for which the grantees had not provided final technical or financial reports, which were due at the conclusion of the grants. The failure of those grantees to submit final reports even after the due date indicates those grantees' failure to adhere to the terms of the award, which should be tracked by the Department so appropriate action can be taken. The Department's Financial Assistance Standard Terms and Conditions, Section B.05, states:

> [The] failure to comply with any or all of the provisions of the award may have a negative impact on future funding by DOC and may be considered grounds for any or all of the following actions: establishment of an account receivable, withholding payments under any DOC awards to the recipient, changing the method of payment from advance to reimbursement only, or the imposition of other special award conditions, suspension of any active DOC awards, and termination of any active DOC awards.

Because it is not unusual that final disbursement of grant funding occurs prior to the due date for these reports, no improper payments were identified.

Payments Lacking Sufficient Documentation Were Not Identified As Improper Payments

While the Department met the applicable compliance requirements for FY 2012, we determined that the Department could further improve its improper payment implementation strategy related to payments made without sufficient documentation. An OIG audit[7] found that the Department paid approximately $302,964 in award fees without proper justification for one contract. This amount was considered an unsupported cost.[8] OMB Circular A-123, Appendix C, states "when an agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment must also be considered an improper payment." Any such payment made without sufficient documentation to determine propriety represents an improper payment. However, this amount was not included in the Department's FY 2012 improper payment reporting in the *PAR*.

Recommendation

We recommend that the Department identify items that lack sufficient documentation from OIG audits and reviews of its programs and activities—and report the unsupported costs related to those items as improper payments in its annual *PAR*.

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[7] DOC OIG, May 18, 2012. *NOAA's Cost-Plus-Award-Fee and Award-Term Processes Need to Support Fees and Extensions,* OIG-12-027-A. Washington, DC: Department of Commerce OIG, 5.

[8] An "unsupported cost" is one questioned by an OIG because the OIG found that, at the time of the audit, such cost was not supported by adequate documentation; *see* 5 U.S.C. App. 3 § 5(f)(2).

Summary of Agency Response and OIG Comments

OIG received the Department's comments on the draft report, which we include as appendix B of this final report. The Department agrees with our report's assertion that grantees who fail to adhere to the terms of the award should be tracked by the Department. In addition, the Department identified its plan to work with NOAA to determine whether unsupported costs identified in our report should be reported as improper payments due to lack of supporting documentation. We look forward to receiving the Department's action plan that addresses our report recommendations.

Appendix A: Objectives, Scope, and Methodology

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. The scope of our review of the Department's compliance with IPIA included all Departmental processes and 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 2012.

To meet our objectives, 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, disbursements, and improper payment processes
- Requesting, obtaining, and analyzing documents related to the risk assessment, disbursement, and improper payment recapture processes, including relevant policies and procedures and reports
- Reviewing "Appendix E: Improper Payments Information Act (IPIA), as Amended, Reporting Details," of the *PAR*

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 January 2013 to February 2013 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

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

MAR 14 2013

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

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

SUBJECT: Comments on the Draft Report Entitled, "*Office of the Secretary FY 2012 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 2012 Compliance with Improper Payment Requirements" (i.e., the report"), issued on March 8, 2013. I am pleased the draft report states the Department met the three applicable Office of Management and Budget criteria for compliance with the Improper Payments Information Act of 2002, as amended by the Improper Payments Elimination and Recovery Act of 2010.

Regarding the page 4 discussion of the grants identified during the FY 2012 payment recapture audit for which the grantees had not provided final technical or financial reports, the Department's Office of Acquisition Management (OAM) agrees that grantees' failure to adhere to the terms of the award should be tracked by OAM, by having the bureaus identify grants that lack sufficient documentation from the grantees' and report these items lacking sufficient documentation to OAM.

Regarding the page 4 discussion of the $302,964 in award fees for one contract that an OIG audit found was paid by the National Oceanic and Atmospheric Administration (NOAA) without proper justification and was considered an unsupported cost, my office will work further with NOAA to review the justification and determine whether the $302,964 should be classified as improper payment(s) due to lack of supporting documentation.

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.