EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

March 22, 2010

M-10-13

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Peter R. Orszag
Director

SUBJECT: Issuance of Part III to OMB Circular A-123, Appendix C

Annually, taxpayers lose billions of dollars in wasteful improper payments by the Federal government to individuals, organizations, and contractors. These errors and mistakes are unacceptable and continue to erode public trust at a time when taxpayers are demanding that their dollars be spent wisely and effectively. Effective spending includes protecting access to Federal programs for their intended beneficiaries, especially the most vulnerable.

Despite efforts to reduce improper payments, agencies reported nearly $100 billion in improper payments for Fiscal Year 2009. In response to this unprecedented level of improper payments, on November 20, 2009, the President signed Executive Order 13520, Reducing Improper Payments. The Executive Order will reduce improper payments by boosting transparency, holding agencies accountable for reducing improper payments, and examining creating incentives for states and other entities to reduce improper payments and increasing penalties for contractors who fail to timely disclose improper payments.

OMB is now issuing the attached government-wide guidance on the implementation of the Executive Order. This guidance is contained in a new Part III to Appendix C of OMB Circular A-123[1]. Significant components of OMB's guidance include:

- Specifying responsibilities for agency accountable officials;
- Determining the programs subject to the Executive Order (i.e., high priority-programs);
- Defining supplemental measures and targets for high-priority programs;
- Establishing reporting requirements under the Executive Order; and
- Establishing procedures to identify entities with outstanding improper payments.

[1] In August 2006, OMB issued Parts I and II to Appendix C of OMB Circular A-123. Parts I and II are implementing guidance for the Improper Payments Information Act of 2002 (IPIA) (Pub. L. No. 107-300), and section 831 of the Defense Authorization Act for Fiscal Year 2002 (Pub. L. No. 107-107, codified at 31 U.S.C. §§ 3561-3567), also known as the Recovery Auditing Act.

This updated guidance is effective for agencies to use immediately and for Fiscal Year 2010 reporting. Please contact Joseph Pika in OMB's Office of Federal Financial Management (202-395-1040) with any questions regarding this guidance.

Attachment

APPENDIX C

Requirements for
Effective Measurement and Remediation
of Improper Payments

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Part I. Improper Payments Information Act Reporting

This Guidance implements the requirements of the Improper Payments Information Act of 2002 (IPIA) (Pub. L. No. 107-300). OMB Memorandum M-03-13, "Improper Payments Information Act of 2002 (Public Law No: 107-300)," issued May 21, 2003, is hereby modified and incorporated as Appendix C, Part I. to OMB Circular A-123, *Management's Responsibility for Internal Controls*.

A. What is an erroneous or improper payment? (The term "erroneous payment" and "improper payment" have the same meaning in this Guidance)

An improper payment is any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. Incorrect amounts are overpayments and underpayments (including inappropriate denials of payment or service). An improper payment includes any payment that was made to an ineligible recipient or for an ineligible service, duplicate payments, payments for services not received, and payments that are for the incorrect amount. In addition, 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 error.[1]

The term "payment" in this Guidance means any payment (including a commitment for future payment, such as a loan guarantee) that is

- derived from Federal funds or other Federal sources;
- ultimately reimbursed from Federal funds or resources; or
- made by a Federal agency, a Federal contractor, a governmental or other organization administering a Federal program or activity.

This includes Federal awards subject to the Single Audit Act Amendments of 1996 (SAA) (Pub. L. No. 104-156) that are expended by both recipients and sub-recipients. In limited cases, and with prior approval from OMB, an agency may implement a measurement approach that excludes improper payments that have been subsequently corrected and recovered from the annual total reported in its Performance and Accountability Report (PAR).

B. What agencies are required to comply with the requirements of the Improper Payments Information Act of 2002 (IPIA) (Pub. L. No. 107-300)?

The agencies required to comply with IPIA are defined broadly as "a[ny] department, agency, or instrumentality in the executive branch of the United States" as defined in title 31, section 102 of the United States Code.

[1] Agencies that use a different method for reporting errors that result from documentation issues must present their proposal to OMB for review. Any deviation from the methodology described above must be approved in advance by OMB.

C. What is a program or activity? (The term "program and activity" is referred to in this Guidance as "program.")

The Act anticipates that agencies will examine the risk of erroneous payments in all programs and activities they administer, beyond those listed in the former Section 57 of OMB Circular A-11. The term program includes activities or sets of activities recognized as programs by the public, OMB, or Congress, as well as those that entail program management or policy direction. This definition includes, but is not limited to, all grants including competitive grant programs and block/formula grant programs, regulatory activities, research and development activities, direct Federal programs, procurements including capital assets and service acquisition, and credit programs. It also includes the activities engaged in by the agency in support of its programs.

For Federal awards subject to the SAA or otherwise listed in the Catalog of Federal Domestic Assistance (CFDA), Federal agencies should consider using the groupings in the OMB Circular A-133 Compliance Supplement and the CFDA. However, unless otherwise specified in OMB Circular A-11, each Federal agency, after consultation with OMB, is authorized to determine the grouping of programs which most clearly identifies and reports erroneous payments for their agency. Agencies must not put programs into groupings that result in significant error rates being masked by the large size or scope of such a grouping. For transparency, the basis for these groupings must be reported in the agency's annual PAR.

D. What constitutes an improper loan or loan guarantee payment?

Direct loans:
Under a direct loan program, improper payments may include disbursements to borrowers or other third-party payments that are based on incomplete, inaccurate, or fraudulent information. They may also include duplicate disbursements, disbursements in the incorrect amount, or loan funds used for purposes other than those allowed by law, program regulations, or agency policy.

Loan guarantee:
Under a loan guarantee program, an improper payment may include disbursements to intermediaries, third-parties for defaults, delinquencies, interest and other subsidies, or other payments that are based on incomplete, inaccurate, or fraudulent information. They may also include duplicate disbursements, disbursements in the incorrect amount, or any disbursements that are not in compliance with law, program regulations, or agency policy.

E. What are agencies required to do?

Agencies are required to review all programs and activities they administer and identify those which may be susceptible to significant erroneous payments. This includes payments from Federal awards subject to the SAA made by recipients and sub-recipients. Annual risk assessments are required for all agency programs where the level of risk is unknown until the risk level is determined and the baseline estimates are established (if applicable). For agency programs deemed not risk susceptible risk assessments are required every three years. Agencies need not conduct formal risk assessments for those programs in which improper payment baselines are already established, are in the process of being measured, or will be measured by an

established date. However, if a program experiences a significant change in legislation and/or a significant increase in funding level, agencies are required to re-assess the program's risk susceptibility during the next annual cycle, even if it is less than three years from the last risk assessment. For all programs and activities in which the risk of erroneous payments is significant, agencies shall estimate the annual amount of erroneous payments and report the estimates in their annual PARs to OMB as set forth in OMB Circular A-136, *Financial Reporting Requirements*, for IPIA and Recovery Auditing Act reporting.

Unless an agency has specific written approval from OMB for a deviation to the steps explained below, agencies are required to follow these steps to determine whether the risk of erroneous payments is significant and to provide valid annual estimates of erroneous payments. (Also, refer to Section E which describes some of the possible acceptable alternative methodologies for error measurement.)

Step 1: Review all programs and activities and identify those which are susceptible to significant erroneous payments.

a. Definition. For the purposes of this Guidance, "significant erroneous payments" are defined as annual erroneous payments in the program exceeding both 2.5 percent of program payments and $10 million.
b. Systematic Method. Many agencies already know which programs and activities are at the highest risk of erroneous payments. Agencies shall institute a systematic method of reviewing all programs and identifying those which they believe to be susceptible to significant erroneous payments. The agency shall maintain documentation to support this review and the results.
c. Other high risk programs. However, OMB may determine on a case-by-case basis that certain programs that do not meet the threshold requirements described above, may still be subject to the annual PAR reporting requirement. This would most likely occur in programs with relatively high annual outlays. For example, a program with $10 billion in annual outlays and a 1 percent error rate (i.e., $100 million improper payment amount) may be required by OMB to be included in an agency's annual IPIA reporting as a high risk program or activity.
d. Examples. To further clarify this step, we provide three examples assuming that no exceptions have been made:

Example 1: Under the analysis in Step 1 a program has a potential error rate of 2.25 percent or $14 million. Under this Guidance an agency need not perform Step 2, making a statistically valid estimate of erroneous payments in the program, because the potential error rate does not exceed 2.5 percent.

Example 2: Under the analysis in Step 1 a program has a potential error rate of 2.75 percent or $9 million. Under this Guidance, an agency need not perform Step 2, making a statistically valid estimate of erroneous payments in the program, because the potential amount of erroneous payments in the program does not exceed $10 million.

Example 3: Under the analysis in Step 1, a program has a potential error rate of 2.75 percent and $11 million. Under this Guidance, an agency must perform Step 2, obtaining a statistically valid estimate of erroneous payments in the program, because the potential error rate exceeds 2.5 percent and the potential amount of erroneous payments exceeds $10 million. The agency must report a statistically valid error rate for the program in its annual PAR.

Step 2: Obtain a statistically valid estimate of the annual amount of improper payments in programs and activities (unless otherwise noted in this Guidance).

a. Annual Estimated Amount. For all programs and activities susceptible to significant improper payments, agencies shall determine an annual estimated amount of improper payments made in those programs and activities. This estimate is a gross total of both over and under payments (i.e., not the net of over and under payments).
b. Random Sample. The estimates shall be based on the equivalent of a statistically random sample of sufficient size to yield an estimate with a 90 percent confidence interval of plus or minus 2.5 percentage points around the estimate of the percentage of erroneous payments.[2]
c. Validity. The agency may use their initial determination of the *potential* error in Step 1 and the examples below to aid in determining their sample size; however, agencies must consult with a statistician to ensure the validity of their sample design, sample size, and measurement methodology.
d. Examples. To clarify this step, we provide two examples below.
    - The examples illustrate the least complicated scenario in which an agency's payments are either correct or incorrect with the error rate expressed as a simple percentage of the number of payments that were incorrect (attribute sample).
    - The examples also assume that a simple random sample of cases is drawn for review from a very large universe of payments.[3]
    - However, it is important to note that the examples below (and the formula in the footnote) provide for an error rate estimate, but not an estimate of improperly paid dollars. Furthermore, many agency programs will need to utilize more complex sample designs because their payment universe contains divergent dollar amounts and/or types of payments.
    - Therefore, most agencies will need to consult with a statistician to design an appropriate sample that may involve estimates of improperly paid dollars or

[2] Agencies may alternatively use a 95 percent confidence interval of plus or minus 3 percentage points around the estimate of the percentage of improper payments.

[3] Under these assumptions, the minimum sample size needed to meet the precision requirements can be approximated by the following formula, which is used in the examples:

$$n \geq \frac{2.706\,(1-P)}{\left(\frac{.025}{P}\right)^2 P}$$

Where n is the required minimum sample size and P is the estimated percentage of erroneous payments (Note: This sample size formula is derived from *Sampling of Populations: Methods and Applications* (3rd edition); Levy, P. S. & Lemeshow, S. (1999); New York: John Wiley & Sons; at page 74. The constant 2.706 is 1.645^2)

multiple stages of selection or stratification (rather than a simple random sample), and to ensure that their sample design and size will meet the minimum required precision level in this guidance.

Example 1: Under the analysis in Step 1, the program has a potential error rate of 3 percent (and at least $10 million). Under this Guidance the agency needs to draw a random sample of payments from the program that will yield a statistical estimate of the erroneous payment rate. The 90 percent confidence interval around this estimate should be no more than plus or minus 2.5 percentage points. Using the initial determination of a three percent error rate yields a minimum sample size of approximately 126 cases.

Example 2: Under the analysis in Step 1, the program has a potential error rate of 4.5 percent (and at least $10 million). The required minimum sample size to achieve a 90 percent confidence interval around this estimate of 4.5 percent of plus or minus 2.5 percentage points is approximately 186 cases.

a. Use Large Sample Sizes. Because of the imprecision of the risk assessment performed in Step 1, agencies should ensure that they do not select too small of a sample. Because, for a given sample size, the standard error of a percentage estimate increases as the point estimate of the error rate approaches 50 percent, agencies should be conservative and use a higher estimated error rate in their sample size calculations to ensure that they will meet the precision targets.
b. Greater Precision. Furthermore, these guidelines for precision should be taken as the minimum, and agencies are encouraged to increase samples above the minimum to achieve greater precision in their estimates. The agency shall maintain documentation to support the calculation of these estimates.
c. Working with other Entities. In addition, agencies should consider working with entities (i.e., grant recipients) that are subject to A-133 audits to use ongoing audits to assist in the process to estimate an erroneous payment rate and amount.

Step 3: Implement a plan to reduce erroneous payments.

a. Root Causes. For all programs and activities as determined under Step 2 with erroneous payments exceeding $10 million, agencies shall identify the reasons their programs and activities are at risk of erroneous payments and put in place a corrective action plan to reduce them. To determine the root causes for improper payments, agencies may be required to conduct an analysis of improper payments which produces an error rate at higher levels of confidence and precision than that prescribed by this Guidance.
b. Reduction Targets. When compiling its plan to reduce improper payments, agencies shall set reduction targets for future improper payment levels and a timeline within which the targets will be reached.
c. Accountability. In addition, agencies must ensure that their managers and accountable officers (including the agency head) are held accountable for reducing improper payments. Agencies shall assess whether they have the information systems and other infrastructure needed to reduce improper payments to minimal cost-

effective levels, and identify any statutory or regulatory barriers which may limit the agencies' corrective actions in reducing improper payments.

Step 4: Report estimates of the annual amount of improper payments in programs and activities and progress in reducing them.

a. Reporting. Agencies shall report to the President and Congress (through their annual PARs in the format required by OMB Circular A-136 for IPIA reporting) an estimate of the annual amount of improper payments for all programs and activities, regardless of the dollar amount of the estimate, as further explained below. Information from agency PARs is subsequently analyzed for inclusion in OMB's government-wide report on improper payments entitled, "Improving the Accuracy and Integrity of Federal Payments," which is published annually during the first quarter of each calendar year.

b. Estimates greater than $10 million. For improper payment estimates that exceed $10 million agencies shall include the following in their annual PARs to OMB:

   i. The estimate of the annual amount of improper payments (gross over and underpayments) made in the program and the methodology used to arrive at that estimate.

   ii. A discussion of the causes of the improper payments identified, actions taken to correct those causes, and the results of the actions taken to address those causes. Part of this discussion shall include the portion of payment errors attributable to insufficient or lack of documentation, if applicable.

   iii. A discussion of the amount of actual improper payments the agency expects to recover and how it will go about recovering them.

   iv. A statement of whether the agency has the information systems and other infrastructure it needs in order to reduce improper payments to the levels the agency has targeted.

   v. If the agency does not have such systems and infrastructure, a description of the resources the agency has requested in its most recent budget submission to Congress to obtain the necessary information systems and infrastructure.

   vi. A description of the steps (including timeline) the agency has taken and plans to take to ensure that agency managers and accountable officers (including the agency head) are held accountable for reducing and recovering improper payments.

   vii. A description of any statutory or regulatory barriers which may limit the agencies' corrective actions in reducing improper payments.

   viii. A statement of how the agency plans to reduce improper payments from the baseline rate over the next three fiscal years provided the agency has estimated a baseline improper payment rate for the program.

c. Estimates less than $10 million. If the improper payment measurement estimate yields less than $10 million, agencies are still required to report the total in their annual PARs to OMB.

F. May agencies use alternative sampling methods?

Yes. Agencies may utilize an alternative sampling approach provided they obtain OMB approval prior to implementation. The scenarios described below are examples of the types of approaches that may be approved by OMB as alternatives to the steps provided in Section E, Part I, of this Guidance. However, agencies are still required to obtain OMB approval prior to implementation. Use of alternatives should not preclude agencies from performing their risk assessments as required by this Guidance in Part I, Paragraph E. In addition, if agencies are approved to use either Scenario 1 or 2, all steps within the scenario are required to be completed, and the use of, and justification for, using an alternative sampling method must be reported in the agency's annual PAR.

> ***Scenario 1.*** An agency has a previous (less than five years old) baseline improper payment rate, and has a plan in place to obtain another full program improper payment rate within five years from the baseline year.
>
> Step 1: Aging the baseline rate. The agency should use statistical methods to update or "age" the baseline improper payment rate in the intervening years, until the next program rate is established. Specifically, the agency should use available data to extrapolate updates of the baseline rate. At a minimum, the analysis should conclude whether the baseline rate is trending upward, downward, or remaining static.
>
> Step 2: Program component annual measurement. The agency should develop an annual error rate for a component of the program. The component can be defined based on population, program area, or known problem area. To the extent possible, the component chosen for analysis should be based on risk so that the agency is targeting an area of the program in which a significant amount of improper payments is expected to occur. This could mean choosing an area because of overall financial exposure, or in the case of State-administered programs, possibly selecting larger states to cover more of the risk. This program component should be statistically sampled annually to obtain an error rate consistent with the statistical rigor requirements of this Guidance in Part I, Paragraph E. The goal for the component study is not to extrapolate an improper payment rate for the program as a whole. Rather, the goal is only to estimate an improper payment amount for the relevant program component being studied. Component-specific baseline and target rates, as well as corrective action plans, should be developed to measure and assess agency progress in reducing improper payments in the program component.

Please note, that both Steps 1 and 2 in Scenario 1 are required if this alternative is chosen by the agency and approved by OMB.

> ***Scenario 2.*** No baseline comprehensive improper payment rate is established and no statistically valid methodology is yet developed to obtain one.
>
> Step 1: Plan for comprehensive baseline measure. A methodology to obtain a comprehensive baseline improper rate must be developed with a timeline that would allow for the first measurement to occur within three years of when the plan was

approved by OMB. Statistical rigor must meet, at a minimum, the requirements previously stated in this Guidance in Part I, Paragraph E.

Step 2: Program component annual measurement. While the agency is working toward a comprehensive baseline rate, the agency should annually identify a component to measure, and begin to report on this measurement within one year of the plan's approval by OMB. (See Step 2 in Scenario 1 above.)

Step 3: Determine rate. Once the baseline rate is established, and if the rate cannot be re-measured annually, the agency should perform both Steps 1 and 2 of Scenario 1 above to ensure that adequate information on improper payments is obtained on an annual basis. If an agency decides to utilize one of the scenarios listed above, it must complete all of the steps for the scenario selected. It is important to note that agencies are not restricted to using only these two approaches; different strategies may be necessary because of pre-existing legislative requirements and/or prohibitions, or because a different method may be more appropriate in providing results for a particular program. Agencies may also consider non-probabilistic sampling approaches, such as purposive sampling or cut-off samples, when legislative requirements make probabilistic samples untenable (for examples see paragraph H).

As detailed above, whether an agency decides to use one of these two scenarios, or proposes a different process, all deviations from Appendix C, Part I, Paragraph E must be approved in advance by OMB.

G. Are agencies required to subject the entire lifecycle of a payment to sampling and/or testing, or may agencies determine the transaction points that have the highest risk of error, and focus their sampling and/or testing accordingly?

Agencies may focus their sampling and/or testing on individual components or transaction points of their programs for the areas posing the highest risk of improper payments. For example, an agency may have a program where payments involve five transaction steps before funds reach the ultimate recipient. However, the agency may determine that only two of the transaction steps are high risk. Therefore, only these two transaction steps need sampling, detailed review, and reporting. This decision and subsequent actions should be documented by agencies in their annual PAR and discussed with, and approved by, OMB prior to implementation.

H. What are Federally-funded, State-administered programs, and may agencies consider other approaches for this these types of programs?

Federally-funded, State-administered programs (e.g., Medicaid, TANF, Title I Grants to States, Child and Adult Care Food Program) receive at least part of their funding from the Federal Government, but are administered, managed, and operated at the State or local level. Where programs are administered at the State level, statistically valid estimates of improper payments may be provided at the State level either for all States or for all sampled States annually. If the improper payment estimates are provided at the State level, these State-level estimates should then be used to generate a national improper payment dollar estimate and rate. However,

agencies may submit a plan to OMB for approval to provide national level estimates for State-administered programs based on a purposive or systematic selection of such programs each year.

One example of this type of approach can be seen in the Title IV-E Foster Care Program, wherein current regulations require that programs be reviewed every three years for compliance. With prior OMB approval, this program has taken the review cycle already in place and leveraged it for IPIA measurement, providing a rolling three-year average error rate.

Alternate methodologies, such as those described above, must be approved by OMB in advance of implementation. The justification to use this type of approach must include a description of the States to be selected each year, the methodology for generating annual national estimates, and a justification for using the proposed plan rather than an estimate based on a random statistical sample.

I. Where and when should agencies report the information required by the Act?

Agencies shall, following the format included in OMB Circular A-136, include a summary of their progress of completing these reporting requirements in the Management Discussion and Analysis (MD&A) section of their PARs. However, the detailed portion of the reporting required by this Guidance is to be included as an appendix to the PAR. The annual estimate of improper payments reported in the PAR should coincide with the fiscal year being reported. However, in limited cases, agencies may report based on the previous fiscal year's data. For example, for the fiscal year (FY) 2006 PAR reporting, agencies may report on FY 2005 data. Agencies may choose a different 12-month reporting period as long as it does not extend beyond the previous fiscal year.

J. How does this Guidance affect recovery auditing activities?

Agencies are to report on their recovery auditing activities annually in the appropriate section of the IPIA portion of their PARs, as required by OMB Circular A-136. If appropriate, agencies should also include a summary of their efforts with the IPIA discussion in the MD&A. There may be instances when an agency makes substantial commercial payments, yet the sum of these payments falls below the Recovery Auditing Act reporting threshold of $500 million. In these cases, the agency should review its commercial payment universe as a "program" during its annual program inventory and risk assessment. If the agency determines this "program" to be risk susceptible, then the area of commercial payments will be subject to routine IPIA reporting. (See also Section II of this Guidance.)

K. Are programs listed in the former Section 57 of OMB Circular A-11 for FY 2001 (see list of these programs attached at the end of Part II) permanently subject to IPIA reporting requirements?

No. If an agency program has documented a minimum of two consecutive years of improper payments that are less than $10 million annually, this agency may request relief from the annual reporting requirements for this program. This request must be submitted in writing to OMB. However, if significant legislative changes occur, if program funding is significantly increased,

or if any change results in substantial program impact, agencies must perform a risk assessment of this program as part of its next reporting cycle. If the risk assessment indicates that the program is again susceptible to significant improper payments, the agency will return to the full measurement and reporting process as required by IPIA. Agencies must continue to report improper payment rates, amounts, and remediation efforts as long as annual improper payments for a program exceed $10 million.

L. What activities may be used to identify, eliminate and recover improper payments?

Federal agencies should take all necessary steps to ensure the accuracy and integrity of Federal payments. Generally speaking, program integrity activities fall into three basic categories: prevention, detection, and recovery.

a. Prevention. Prevention activities are by definition proactive. These are actions performed prior to payment issuance to assure that the payment is accurate when made. Examples of this type of activity include pre-payment audits, due diligence based on risk priotization, and predictive modeling. (This is a process whereby transactions that have pre-established criteria or characteristics may be automatically assessed as high risk or not. The high risk transactions then receive increased focus during pre- and post-payment audits.)

b. Detection. Detection activities occur subsequent to payment. These are actions that test the accuracy of payment processes and identify errors made during those processes. For example, routine payment verification or quality control would review a universe of payments using different criteria than used on the front-end to detect potential payment errors. Data matching compares two or more data fields or sets to confirm consistent input. Use of data mining techniques allows payment patterns or anomalies to be isolated and subjected to further review.

c. Recovery. Recovery or collection activities refer to efforts directed toward recapturing improperly made payments. For example, the Treasury Offset Program is frequently used to recoup overpayments. In addition, the recovery auditing concept has been shown to be effective when either an internal or external organization reviews payments to determine correctness. (See Part II of this Guidance for additional details regarding this subject.) An innovative direction that some Federal agencies have begun utilizing is risk sharing with its contractors. For example, one large agency has its contractors assume financial responsibility for any payment errors as unallowable contract costs. In addition, this agency financially penalizes its contractor when the amount of payment errors payments exceeds two percent of total contract payments. As a result, this program has virtually no improper payments. (This practice in no way delegates legal responsibility.)

d. Possible Approaches to Consider. Current practices that are yielding positive results in certain Federal agencies include:

- Predictive modeling – an automated process whereby transactions that have pre-established criteria or characteristics are automatically deemed high risk and therefore receive increased focus both pre- and post-payment. For State-administered programs, in

which States are utilizing unique predictive models, Federal agencies should evaluate which States have the most effective methods and ensure that best practices in this area are disseminated to other States.

- Data mining – an automated process used to scan data bases to detect patterns, trends, and/or anomalies for use in risk management or other areas of analysis. This technique can be used to build more effective predictive modeling criteria, identify control weaknesses that are leading to improper payments, and/or inform on the most effective oversight and due diligence activities.

- Alignment of due diligence and risk oversight – Federal agencies should structure due diligence and oversight activities so that higher risk transactions generate additional due diligence/review and lower risk transactions generate limited or no due diligence/review.

- Prioritization of verification activities based on effectiveness – Federal agencies should evaluate the return on investment of various outreach efforts (e.g., in-person audits, written notices, phone calls) and utilize those efforts with the greatest return on investment.

- Data matches – Federal agencies should be evaluating Federal, State, local, and private databases to assess whether data matches can help strengthen pre- and post-payment reviews.

M. Where can agencies go to find additional information about estimating and reducing improper payments?

The Government Accountability Office surveyed public and private sector organizations and issued a report on the practices to use in measuring and preventing erroneous payments. That report, "Strategies to Manage Improper Payments: Learning from Public and Private Sector Organizations" (GAO-02-69G, October 2001). This document may also be found on the Internet at www.gao.gov/cgi-bin/getrpt?gao-02-69-G. In addition, there are documents on the Chief Financial Officers Council web site (www.cfoc.gov) that discuss methods, practices and processes, for identifying, preventing, and recovering improper payments.

Part II. Recovery Auditing

This section of the guidance implements the requirements of section 831 of the Defense Authorization Act for Fiscal Year 2002 (Pub. L. No. 107-107, codified at 31 U.S.C. §§ 3561-3567) (section 831), also known as the Recovery Auditing Act. Section 831 added a new subchapter to the U.S. Code (Title 31, §§ 3561-3567) that requires agencies that enter into contracts with a total value in excess of $500 million in a fiscal year to carry out a cost-effective program for identifying errors made in paying contractors and for recovering amounts erroneously paid to the contractors. A required element of such a program is the use of recovery audits and recovery activities. As previously mentioned in Part I, Section J of this Guidance, for agencies that use internal review for monitoring accuracy of commercial payments, this payment category is to be included in the agency's program inventory and risk assessment process. However, agencies that use internal staff to perform recovery auditing must report these activities under the same conventions as required when contracting with private sector recovery auditing firms.

OMB previously issued two memoranda to implement section 831. Memoranda M-03-07, "Programs to Identify and Recover Erroneous Payments to Contractors," of January 16, 2003, and M-03-12, "Allowability of Contingency Fee Contracts for Recovery Audits," of May 8, 2003, are hereby modified and incorporated as Appendix C, Part II to OMB Circular A-123, Management's Responsibility for Internal Controls.

This Guidance is intended to assist agencies in successfully implementing recovery auditing and recovery activity as part of an overall program of effective internal control over contract payments.

A. What are agencies generally required to do when implementing a recovery auditing program?

Agencies shall have a cost effective program of internal control to prevent, detect, and recover overpayments to contractors resulting from payment errors. A program of internal control may include policies and activities such as prepayment reviews, a requirement that all relevant documents be made available before making payment (e.g., invoice, packing list, receiving report, inspection report), payment of only original invoices (as opposed to photocopies), and performance of contract audits. For many agencies, these types of activities are known as internal review. However, for agencies that enter into contracts with a total value of more than $500 million in a fiscal year, a recovery audit program is a required element of their internal controls over contractor payments.

B. What are the reporting requirements for recovery auditing?

In accordance with OMB Circular A-136, agencies must report annually on their recovery auditing program in their PARs. The report shall include the following information:

a. A general description and evaluation of the steps taken to carry out a recovery auditing program;

b. The total cost of the agency's recovery auditing program. Report separately the costs of the agency's recovery audit program activities (agency salaries and expenses) and contracted recovery audit services (amounts paid and payable to recovery audit contractors);

c. The total amount of contracts subject to review, the actual amount of contracts reviewed, the amounts identified for recovery, and the amounts actually recovered in the current year. Report separate totals from amounts attributable to internal agency activities from recovery audit contractors;

d. A corrective action plan to address the root causes of payment error;

e. A general description and evaluation of any management improvement program carried out pursuant to this Guidance; and

f. A description and justification of the classes of contracts excluded from recovery auditing review by the agency head.

C. What are the definitions used for recovery auditing in this Guidance?

For purposes of this Guidance the following terms and definitions are used:

1. A *Contract Audit* refers to a post-award examination of the books and records of a Federal contractor that is performed by the contracting officer, or an authorized representative of the contracting officer, pursuant to the audit and records clause incorporated in the contract. A contract audit is normally performed by an auditor that serves in an advisory capacity to the contracting officer. A post-award contract audit, as distinguished from a recovery audit, is normally performed for the purpose of determining if amounts claimed by the contractor are in compliance with the terms of the contract and applicable laws and regulations. For example, the scope of a post-award contract audit may include a review of the direct and indirect costs claimed to have been incurred or anticipated to be incurred under a negotiated contract. Such reviews involve the contractor's accounting records, including the contractor's internal control systems. A post-award contract audit may also include a review of other pertinent contractor records (e.g., reviews to determine if a contractor's proposal was complete, accurate, and current); reviews of contractor prices charged for commercial items sold to other Federal and non-Federal customers; and reviews of the contractor's systems established for identifying and returning any erroneous payments received under its Federal contracts.

2. A *Recovery Audit Contingency Contract* is a contract for recovery audit services in which the recovery audit contractor is paid a portion of the amount recovered. The amount the contractor is paid, generally a percentage of the recoveries, is based on the amount actually collected based on the evidence discovered and reported by the recovery audit contractor to the appropriate agency official.

3. A *Management Improvement Program* is an agency-wide program to address the flaws in an agency's internal controls over contractor payments discovered during the course of

implementing a recovery audit program, or other control activities over contractor payments.

4. *Payment Errors* are errors resulting from duplicate payments; errors on invoices or financing requests; failure to reduce payments by applicable sales discounts, cash discounts, rebates, or other allowances; payments for items not received; mathematical or other errors in determining payment amounts and executing payments; and the failure to obtain credit for returned merchandise.

5. *Recovery Activity* is any activity by an executive agency to attempt to recover overpayments identified by a recovery audit.

6. A *Recovery Audit* is a review and analysis of the agency's books, supporting documents, and other available information supporting its payments that is specifically designed to identify overpayments to contractors that are due to payment errors. It is not an audit in the traditional sense. Rather, it is a control activity designed to assure the integrity of contract payments, and, as such, is a management function and responsibility.

7. A *Recovery Audit Program* is an agency's overall plan for the performance of recovery audits and recovery activities. The head of the agency will determine the manner and combination of recovery audits and activities that are expected to yield the most cost-effective recovery audit program for the agency. This program should include a management improvement program as defined above and discussed in Part II, Section K.

D. What is the scope for Recovery Audit Programs?

1. All classes of contracts and contract payments should be considered for recovery audits. Agencies should review their different types of contracting categories and identify those classes of contracts that have a higher potential for payment errors (i.e., contract categories where the benefits would likely exceed the agency's costs of the recovery audits and recovery activities).

2. Agency heads may exclude classes of contracts and contract payments from recovery audit activities if the agency head determines that recovery audits are inappropriate or are not a cost-effective method for identifying and recovering erroneous payments. The following are examples of classes of contracts and contract payments that may be excluded:

    i. Cost-type contracts that have not been completed where payments are interim, provisional, or otherwise subject to further adjustment by the Government in accordance with the terms and conditions of the contract.

    ii. Cost-type contracts that were completed, subjected to a final contract audit and, prior to final payment of the contractor's final voucher, all prior interim payments made under the contract were accounted for and reconciled.

iii. Other contracts that provide for contract financing payments or other payments that is interim, provisional, or otherwise subject to further adjustment by the Government in accordance with the terms and conditions of the contract.

3. Recent payments may be excluded for a reasonable (as defined by the agency) period of time, in order to allow the agency's normal post-payment processes to identify and correct any overpayments.

4. Recovery auditing contractors may, with the consent of the employing agency, communicate with the agency's contractors for the purpose of verifying the validity of potential payment errors they have identified. A recovery auditing contractor shall not maintain a presence on the property of the contractors that are the subject of recovery auditing.

5. Agency heads shall take steps to ensure that the implementation of their recovery audit program does not result in duplicative audits of contractor records. In this regard, actions to follow-up with contractors on potential overpayments identified through recovery audits of agency records do not constitute audits of contractor records. However, recovery auditing activities should not duplicate other audits of the same (contractor or agency) records that specifically employ recovery audit techniques to identify and recover payment errors. At a minimum, agency heads should coordinate with their Inspectors General and other organizations with audit jurisdiction over agency contracts.

6. In addition to identifying and documenting specific overpayments resulting from payment errors, and where appropriate as determined by the agency, recovery auditors must also analyze the reasons why payment errors occurred, and recommend cost-effective controls to prevent such overpayments in the future, as a normal part of their contract work. The results of such analyses and related recommendations will be considered by the agency as part of its management improvement program. (For more information on this point, see also Part II, Section F.) If requested, the agency should provide such information to its Office of Inspector General.

7. Instances of potential fraud discovered through recovery audits and recovery activities shall be reported immediately to the agency Office of Inspector General.

E. Who may perform recovery audits?

Recovery audits may be performed by employees of the agency, by any other department or agency of the United States Government acting on behalf of the executive agency, or by contractors performing recovery audit services under contracts awarded by the executive agency.

F. What is the role and authority of Inspectors General?

1. Nothing in this Guidance should be construed to impair the authority of an Inspector General under the Inspector General Act of 1978 or any other law. However, because the recovery audit program required by this Guidance is an integral part of the agency's internal control over contract payments, and therefore a management function,

independence considerations would normally preclude the Inspector General and other agency external auditors from carrying out management's recovery audit program.

2. Agencies' Inspectors General and other external agency auditors are encouraged to assess the effectiveness of agencies' recovery audit programs as part of their internal control work on existing audits (e.g., the annual financial statement audit, or as a separate audit).

G. May recovery audit services be performed by contractors?

Yes. Agency heads may enter into any appropriate type of contract, including a contingency contract for recovery audit services. However, amounts recovered due to interim payment errors made under ongoing contracts (i.e., duplicate progress payments or cost reimbursement claims) may not be available to pay the recovery audit fee if these amounts are still needed to make subsequent payments under the contract. Therefore, agencies would need to establish other funding arrangements when making payments to recovery audit contractors in such cases.

H. Are there any prohibitions when using a contracted auditing firm?

In addition to provisions that describe the scope of recovery audits (and any other provisions required by law, regulation, or agency policy), any contract with a private sector firm for recovery audit services shall include provisions that:

1. Prohibit the recovery audit contractor from:

    i. requiring production of any records or information by the agency's contractors. Only duly authorized employees of the agency can compel the production of information or records from the agency's contractors, in accordance with applicable contract terms and agency regulations;

    ii. establishing or otherwise having a physical presence on the property or premises of any other agency contractor for the purpose of performing the contract;

    iii. acting as an agent for the Federal Government in the recovery of funds erroneously paid to contractors;

    iv. using or sharing sensitive financial information with any individual or organization, whether associated with the Federal Government or not, that has not been released for use by the general public, except for the purpose of fulfilling the recovery audit contract; and

    v. disclosing any information that identifies an individual, or reasonably can be used to identify an individual, for any purpose other than performing the recovery audit.

2. Require the recovery audit contractor to take steps to safeguard the confidentiality of sensitive financial information that has not been released for use by the general public and any information that could be used to identify a person.

I. Who performs recovery activities once the improper payments are discovered and verified?

The actual collection activity may be carried out by Federal employees. However, agencies may use another private sector entity, such as a private collection agency, to perform this function, if this practice is permitted by statute. As noted above in section H.1.iii. above, the recovery auditing contractor itself may not perform the collection activity, unless it meets the definition of a private collection agency, and the agency involved has statutory authority to utilize private collection agencies. Agencies shall follow applicable laws and regulations governing collection of amounts owed to the Federal Government.

J. What is the proper disposition of recovered amounts?

1. Funds collected under a recovery audit program less any amounts needed to make payments under the related contract(s) shall be available to the executive agency to reimburse the actual expenses incurred by the executive agency for the following purposes:

    i. To reimburse the actual expenses incurred by the executive agency for the administration of the program (including payments made to other agencies that carry out recovery audit services on behalf of the agency);

    ii. To pay contractors for recovery audit services.

2. Except as provided in paragraph 3 below, any amounts erroneously paid by an executive agency that are recovered under a recovery audit program that are not used to reimburse expenses of the executive agency or pay recovery audit contractors under paragraph 1:

    i. Shall be credited to the appropriations from which the erroneous payments were made, shall be merged with other amounts in those appropriations, and shall be available for the purposes and period for which such appropriations are available; or

    ii. If no such appropriations remain available, the funds recovered shall be deposited in the Treasury as miscellaneous receipts.

3. When required or authorized by other provisions of law, any funds remaining after reimbursing expenses of the executive agency and paying recovery audit contractors, shall be credited to a non-appropriated fund instrumentality, revolving fund, working-capital fund, trust fund, or other fund or account.

4. Contingency fee contracts shall preclude any payment to the recovery audit contractor until the recoveries are actually collected by the agency.

5. All funds collected and all direct expenses incurred as part of the recovery audit program shall be accounted for specifically. The identity of all funds recovered shall be maintained as necessary to facilitate the crediting of recovered funds to the correct appropriations and to identify applicable time limitations associated with the appropriated funds recovered.

K. Are agencies authorized to implement Management Improvement Programs?

Yes. Section 3564 of title 31, U.S. Code, authorizes agencies to implement "management improvement programs." Such programs shall take the information obtained from the recovery audit program, as well as other audits, reviews, or information that identify weaknesses in an agency's internal controls, and ensure that actions are undertaken to improve the agency's internal controls governing contract payments.

L. May agencies with grant programs employ recovery auditing?

Agencies whose grant programs fund significant contract activity by grant recipients may consider encouraging recovery auditing contracts at the grant recipient level. Costs of contingency fee contracts incurred by State and local governments for the recovery of improper payments charged against Federal programs are allowable costs under OMB Circular A-87, *Cost Principles for State, Local and Indian Tribal Governments,* Attachment A, Section C.3. State and local governments may use a portion of recovered improper or fraudulent payments from Federal programs to pay the contingency fees involved with recovery auditing contracts. The portion used to pay contingency fees, as well as the actual expenses incurred by the Grantee for program administration, should be claimed as administrative costs.

PROGRAMS FOR WHICH ERRONEOUS PAYMENT INFORMATION IS REQUESTED

Erroneous payment information is requested for the following:

Department of Agriculture
- Food Stamps
- Commodity Loan Program
- National School Lunch and Breakfast
- Women, Infants, and Children

Department of Defense
- Military Retirement
- Military Health Benefits

Department of Education
- Student Financial Assistance
- Title I
- Special Education—Grants to States
- Vocational Rehabilitation Grants to States

Department of Health and Human Services
- Head Start
- Medicare
- Medicaid
- TANF
- Foster Care—Title IV-E
- State Children's Insurance Program
- Child Care and Development Fund

Department of Housing and Urban Development
- Low Income Public Housing
- Section 8 Tenant-Based
- Section 8 Project Based
- Community Development Block Grants (Entitlement Grants, States/Small Cities)

Department of Labor
- Unemployment Insurance
- Federal Employee Compensation Act
- Workforce Investment Act

Department of Treasury
- Earned Income Tax Credit

Department of Transportation
- Airport Improvement Program
- Highway Planning and Construction
- Federal Transit—Capital Investment Grants
- Federal Transit—Formula Grants

Department of Veterans Affairs
- Compensation
- Dependency and Indemnity Compensation
- Pension
- Insurance Programs

Environmental Protection Agency
- Clean Water State Revolving Funds
- Drinking Water State Revolving Funds

National Science Foundation
- Research and Education Grants and Cooperative Agreements

Office of Personnel Management
- Retirement Program (CSRS and FERS)
- Federal Employees Health Benefits Program (FEHBP)
- Federal Employees' Group Life Insurance (FEGLI)

Railroad Retirement Board
- Retirement and Survivors Benefits
- Railroad Unemployment Insurance Benefits

Small Business Administration
- (7a) Business Loan Program
- (504) Certified Development Companies
- Disaster Assistance
- Small Business Investment Companies

Social Security Administration
- Old Age and Survivors' Insurance
- Disability Insurance
- Supplemental Security Income Program

APPENDIX C, PART III

Requirements for Implementing Executive Order 13520: Reducing Improper Payments

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Part III: Requirements for Implementing Executive Order 13520

This guidance implements the requirements of Executive Order 13520 of November 20, 2009: Reducing Improper Payments.

A) General Guidance

1) Overview

a) Which agencies are subject to the requirements of Executive Order 13520?

The agencies required to comply with Executive Order 13520 are those that fall within the broad definition in title 31, Section 102 of the United States Code – that is any "department, agency, or instrumentality in the executive branch of the United States."

b) What is an improper payment?

For the purpose of this guidance, the definition of an improper payment is the same as that contained in the Improper Payments Information Act (IPIA) of 2002 (Pub. L. No. 107-300) and Part I, Section A of Appendix C to the Office of Management and Budget (OMB) Circular A-123, Requirements for Effective Measurement and Remediation of Improper Payments.

An improper payment is any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. Incorrect amounts are overpayments and underpayments (including inappropriate denials of payment or service). An improper payment includes any payment that was made to an ineligible recipient or for an ineligible service, duplicate payments, payments for services not received, and payments that are for the incorrect amount. In addition, 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 error.

The term "payment" in this guidance means any payment (including a commitment for future payment, such as a loan guarantee) that is:

1. Derived from Federal funds or other Federal sources;
2. Ultimately reimbursed from Federal funds or resources; or
3. Made by a Federal agency, a Federal contractor, a governmental or other organization administering a Federal program or activity.

This includes Federal awards subject to the Single Audit Act (31 U.S.C. Chapter 75) that are expended by both recipients and sub-recipients.

c) Which activities should be used to prevent improper payments?

Part I, Section L of Appendix C to OMB Circular A-123 contains a description of steps that agencies should follow to prevent, detect, and recover improper payments. Agencies should ensure that before issuing a payment, to the extent possible or allowable by law, the program

performs a series of basic checks to ensure that the recipient is not on a list that precludes them from receiving a government payment. Examples of such lists include:

1. The fugitive felons list;
2. The master death file of deceased individuals;
3. The Excluded Parties List System that contains information on entities that are debarred, suspended, or proposed for debarment, excluded, or disqualified or ineligible from receiving Federal contracts, certain subcontracts, and certain Federal assistance and benefits; and
4. Any other lists or systems developed by the agency.

d) What are the roles and responsibilities of States and local governments in reducing errors?

Federally-funded, State-administered programs (e.g., Medicaid, Temporary Assistance for Needy Families) receive at least part of their funding from the Federal Government, but are administered, managed, and operated at the State or local level. In Federally-funded, State-administered programs, States and local governments are integral partners in reducing errors and ensuring program access for eligible beneficiaries. Agencies that have Federally-funded, State-administered programs, especially any that are deemed high-priority, should work at the Federal, State, and local levels to reduce improper payments and to implement the requirements of the Executive Order.

e) How will OMB determine the "high-priority" programs as required under Section 2(a)(i) of the Executive Order?

High-priority programs will be determined annually by the Director of OMB based on improper payment reporting in agencies' annual Performance and Accountability Report (PAR) or Agency Financial Report (AFR).

The Director of OMB will classify a program as high-priority if the program meets the following criteria:

1. It is susceptible to significant improper payments as defined by legislation and OMB implementing guidance and either:
    i. Measured and reported errors above the threshold determined by OMB and contributed to the majority of improper payments in the most recent reporting year; or
    ii. Has not reported an improper payment dollar amount in the most recent reporting year, but has in the past reported errors above the threshold determined by OMB and not received relief from OMB from measuring and reporting, or
    iii. Has not yet reported an overall program improper payment dollar amount, but the aggregate of the measured program's component errors are above the threshold.
2. For those programs with error amounts close to the threshold, but with error rates below two percent of program outlays, agencies may work with OMB to determine if the program can be exempt from fulfilling certain requirements of the Executive Order.

The Fiscal Year (FY) 2010 threshold is $750 million in improper payments as reported in the PAR or AFR. OMB will annually re-evaluate the high-priority program list after agencies publish annual improper payment information in the PAR or AFR. Beginning with FY 2010 reporting, and for all subsequent years, OMB will notify agencies of the new threshold and if any programs shall be added or removed (based on reporting errors above or below the new threshold) from the high-priority list within 30 calendar days of the submission and publication of agency PAR or AFR as required by OMB.

2) Accountable Official Requirements

f) Which agencies are responsible for establishing accountable officials under Section 3(a) of the Executive Order?

OMB encourages all agencies to appoint improper payment accountable officials and to continually assess the effectiveness of its internal controls for preventing and detecting improper payments. However, if an agency without a high-priority program elects to appoint an accountable official, the agency is not expected to fulfill the specific requirements under the Order related to high-priority programs.

Agencies with high-priority programs, as determined under Section 2 of the Executive Order, are required to designate an agency accountable official to oversee agency efforts to reduce improper payments. Agencies with high-priority programs should designate a second official - responsible for efforts within a component or bureau - if a single component or bureau makes up a significant portion of the agency's improper payments. The second component accountable official should work within the component or bureau to coordinate the bureau's program integrity efforts.

g) Who may serve as an agency or component accountable official under Section 3(a) of the Executive Order?

An agency's accountable official must hold an existing position that requires Senate confirmation; in other words, agencies do not have to create a new position. The second component accountable official does not have to hold a Senate-confirmed position. Agencies must submit each accountable official's name and position to the Director of OMB (including any acting accountable officials) for review and approval by the Director within 30 calendar days of a vacancy (e.g., retirement or resignation).

In subsequent years, if an agency did not previously have a high-priority program but has a newly designated high-priority program, the agency has 30 calendar days from the date of the announcement of a new high-priority program to submit the name and position of proposed agency and component accountable officials.

h) What will be the accountable officials' roles and responsibilities?

Each accountable official will be responsible for the agency's or component's efforts to implement Executive Order 13520 and its requirements. For instance, accountable officials will be responsible for meeting error reduction targets in a manner that does not negatively impact program access. Implementing Executive Order 13520 should represent a significant responsibility and be a major focus of the accountable official and the second component accountable official.

3) Program Access

i) Why is program access important?

The purpose of the Executive Order is to reduce improper payments while continuing to ensure that Federal programs serve and provide access to their intended beneficiaries. Because the order targets error, waste, fraud and abuse, efforts to reduce improper payments must protect access to Federal programs by their intended beneficiaries. Efforts to meet established targets for reducing improper payments in high-priority programs should not deter eligible beneficiaries from seeking and receiving benefits.

j) What are measures of access?

Measures of access to Federal programs by intended beneficiaries could include the following:

1. The rate of participation by eligible beneficiaries (e.g., the percent of individuals receiving benefits as a share of all individuals eligible to receive benefits);
2. The rate of benefits claimed by eligible beneficiaries (e.g., the percent of benefits received by eligible participants as a share of the total amount of benefits that all eligible beneficiaries could have received if they had participated);
3. The availability of program providers;
4. Whether eligible individuals are being improperly prevented from accessing program benefits;
5. The ease or difficulty of accessing benefits; or
6. Whether eligible beneficiaries who are receiving benefits are improperly denied or removed from program benefits as a result of agency efforts to reduce errors.

k) What are agency expectations with respect to program access?

Agencies must identify and develop measures of program access, where applicable, for their high-priority programs. In addition, the Accountable Official's Report to the Inspector General (IG) (see Section 2 under *Reporting Deliverables As Required by Executive Order 13520* of this guidance) must address the agencies' plans to ensure that the people who are eligible for benefits continue to have access to and receive those benefits while agencies are moving forward with efforts to reduce improper payments.

OMB will issue, by July 31, 2010, supplemental instructions for agencies to use in developing measures of program access and plans for ensuring the access and participation by eligible beneficiaries.

B) Improper Payments Reporting

1) Additional Reporting Requirements

a) How does this guidance impact existing improper payments guidance?

Appendix C to OMB Circular A-123: Requirements for Effective Measurement and Remediation of Improper Payments, contains guidance for agencies on implementing the IPIA and Section 831 of the Defense Authorization Act of FY 2002 (Pub. L. No. 107-107), also known as the Recovery Auditing Act (or RAA). Implementing guidance for Executive Order 13520 will be used in conjunction with the existing IPIA and RAA guidance. Specifically, agencies will be responsible for continuing to implement the IPIA and the RAA (and/or any subsequent legislation), as well as Executive Order 13520. This includes reporting annual error measurements for programs susceptible to significant improper payments under the IPIA (which includes both "high-priority" and non-"high-priority" programs) in their annual PAR or AFR.

b) How will agencies report root causes of error to comply with the Executive Order?

Agencies will report and publish information on the causes of improper over and underpayments for all programs susceptible to significant improper payments under the IPIA based on three categories of error: (Documentation and Administrative Errors, Authentication and Medical Necessity Errors, and Verification Errors). The definitions for the three categories of error are described below:

1. *Documentation and Administrative Errors*: Errors caused by the absence of supporting documentation necessary to verify the accuracy of a payment; or errors caused by incorrect inputting, classifying, or processing of applications or payments by a relevant Federal agency, State agency, or third party who is not the beneficiary. Two examples of improper payments due to documentation and administrative errors are:
    i. A program does not have documentation to support a beneficiary's eligibility for a benefit; or
    ii. A beneficiary receives a payment that is excessive due to a data entry mistake.
2. *Authentication and Medical Necessity Errors*: Errors caused by an inability to authenticate eligibility criteria through third-party databases or other resources <u>because no databases or other resources exist</u>, or providing a service that was not medically necessary given the patient's condition. Two examples of improper payments due to authentication and medical necessity errors include:
    i. Being unable to establish that a child lived with a family for a certain amount of time (e.g., making the family eligible for the Earned Income Tax Credit) because no database exists to do so; or
    ii. Providing a power wheelchair to a patient that does not need a wheelchair.
3. *Verification Errors*: Errors caused by the failure or inability to verify recipient information, including earnings, income, assets, or work status, <u>even though verifying information does exist in third-party databases or other resources</u> (in this situation, as contrasted with "authentication" errors, the "inability" to verify may arise due to legal or other restrictions that effectively deny access to an existing database or resource), or

errors due to beneficiaries failing to report correct information to an agency. Two example of verification errors are:

i. Not confirming a recipient's earnings or work status (due to either financial or statutory constraints) through existing databases; or
ii. A beneficiary failing to provide an agency with information on earnings.

Agencies should report the percentage of errors in each category proportional to the dollar amount of error attributable to that error in the sample conducted to determine an error rate under the IPIA. These percentages of error in each category do not need to meet the statistical requirements of Part I of Appendix C to OMB Circular A-123. During FY 2010, agencies should work with OMB, as needed, to refine their error measurement plans to also report the measured errors in the above three categories.

For FY 2010, reporting improper payments based on the three categories of error outlined above for those programs susceptible to significant improper payments under the IPIA will be optional. For FY 2011 reporting and beyond, agencies with programs that are susceptible to significant improper payments under the IPIA will be required to report information on the three categories of error annually in their PAR or AFR. If a program is unable to report its error information by these root causes of improper payments, then it may seek relief from reporting from OMB.

c) How can a program seek relief from reporting improper payments based on the three categories of error?

If a program is unable to report error information by the three root causes of improper payments, the agency accountable official may request relief from this requirement no later than 60 days prior to the publication of the annual PAR or AFR. This request must be submitted in writing to OMB and shall explain why the agency cannot report this information and its plans to report the information in the future.

2) <u>Annual or Semi-annual Measures and Targets</u>

d) Who is required to establish annual or semi-annual measurements under Section 2(a)(ii) of the Executive Order?

Under the Executive Order, agencies with high-priority programs are required to establish semi-annual (or more frequent) measurements for reducing improper payment:

1. For high-priority programs that already report an annual measurement, agencies should develop semi-annual or more frequent supplemental measurements within 90 days of a program being deemed high-priority;
2. For high-priority programs that are establishing or revising their measurement methodology, agencies should work with OMB to establish a plan for meeting the requirements of the IPIA within 90 days of a program being deemed high-priority;
3. For high-priority programs with an approved measurement plan but without an annual measurement, agencies should work with OMB to develop a plan for developing annual measurements.

e) What are the requirements for establishing annual or semi-annual measurements in high-priority programs, also known as supplemental measures?

The supplemental measures should focus on higher risk areas within the high-priority program and report on root causes of errors that agencies can resolve through corrective actions. In addition, the measures should use available and accessible information (e.g., claims, payments, files) for the current year rather than previous years to the extent possible. Lastly, the supplemental measures do not have to meet the statistical requirements of Part I to Appendix C to OMB Circular A-123.

Possible measurement examples include:

1. *A measurement that focuses on the main cause of errors in the program.* For instance, if documentation is the leading cause of error in a high-priority program, then the program could establish a measurement that focuses on that specific issue;
2. *A measurement that focuses on one of the main causes of error in the program.* For example, if an agency is unable to measure or identify the leading root cause of error, it could establish a measure to examine another major root cause of error; or
3. *A measurement or set of measurements that use timely measurement of a contributing factors or proxy indicators of error in the program.* For instance, if an agency can identify a timely measured factor known to move in the same or inverse direction of error, while not a main cause, it could establish a measure or set of factor measures.

f) Which tools should agencies use to identify supplemental measures?

When identifying areas within the high-priority program that should be measured as part of the supplemental measurement requirement of the Executive Order, agencies should focus on areas that will provide the greatest rate of return on investment to the program.

To identify such areas where agencies could achieve optimal impact on error prevention and reduction, the agencies should analyze their programs and root causes of error through two perspectives:

1. The degree to which an agency has control over reducing errors within a program:
    i. *More Control* – Errors that could be addressed through administrative or regulatory changes based on existing program requirements;
    ii. *Less Control* – Errors that require statutory changes at the Federal or State level
2. The impact on agency outlays:
    i. *High-Impact Errors* – High dollars errors that may be intentional (e.g., fraud), or unintentional (but still high dollar) and have a large impact on Federal outlays;
    ii. *Low-Impact Errors* – Small dollar errors (e.g. infrequent data entry mistakes, errors due to lack of supporting documentation) that likely have a minimal impact on Federal outlays.

Using these two identified areas, the matrix below shows four different quadrants that agencies can consider when developing supplemental measures for high-priority programs (i.e., high-impact errors within agency control, low-impact errors within agency control, high-impact errors

not within agency control, and low-impact errors not within agency control). OMB recommends that agencies focus on root causes of error within high-priority programs that would be within the program's ability (or control) to reduce, and which would impact program outlays.

	More Control	*Less Control*
High-Impact	• Fraud • System errors • Agency policies	• Statutory definitions and requirements
Low-Impact	• Infrequent data entry errors by Federal agencies (with low-dollar impact)	• Infrequent instances of State agencies lacking minor documentation (with low-dollar impact)

g) How should agencies focus on fraudulent activities?

When agencies are reviewing the root causes of error, or analyzing areas for supplemental measures and targets, agencies should be mindful of maintaining a focus on fraudulent activity within the program. For instance, fraudulent actions (e.g., using fraudulent documents to receive a benefit or contract payment) may have an impact on agency outlays, and may also be something that agencies can reduce through improved pre-payment reviews and additional safeguards. Agencies should refer matters involving possible fraudulent activities to the Office of IG. When identifying supplemental measures, agencies should take into account their high-risk areas and how the supplemental measures could report on agency efforts to reduce improper payments that are within their control and which may have a large impact on their outlays (e.g., fraud, system errors, or agency policies).

h) Are the reduction targets agencies create to comply with Part I of Appendix C to Circular A-123 the same as the supplemental targets that agencies will set to comply with the Executive Order?

No, in most cases agencies will need to establish two sets of targets for high-priority programs:

1. Three-year reduction targets for all programs susceptible to improper payments under the IPIA as required by Part I of Appendix C to Circular A-123, and
2. Three-year supplemental targets for high-priority programs as required by Part III of Appendix C to Circular A-123.

If, with OMB's approval, a program does not establish supplemental targets under Part III of Appendix C to Circular A-123, then the program is still subject to its overall annual reduction targets as established under Part I of Appendix C to Circular A-123.

i) What are the requirements for establishing annual or semi-annual targets for measurements in high-priority programs under the Executive Order?

When establishing the annual or semi-annual targets as required by the Executive Order, agencies should set aggressive targets (e.g., targets for lower rates in the future), and will need to

provide OMB supporting analytics (e.g., projected impact of corrective actions or regulatory changes that might lead to lower rates) on how the agency chose those targets.

Annual and semi-annual targets for high-priority programs will be set once an initial measurement is reported. The targets will remain fixed for the first two years, and only be revisited prior to the two-year mark if there is a significant legislative change, funding change, or a change to the program's error measurement methodology. If an agency adds new supplemental measures during this time period, it should establish additional targets for the program.

Once the first two years have passed, new targets could be set for another three-year time frame. Results from the previous two-year time frame should be used to develop future targets or, if the program shows significant progress in reducing improper payments, the program may work with OMB to develop different measures and targets to focus on another high-impact area.

j) What if a program does not meet a supplemental target?

If a high-priority program does not meet its supplemental targets for two consecutive years, then it is required to submit a report to the Director of OMB (see Section 1 under *Reporting Deliverables as Required by Executive Order 13520* of this guidance).

k) How will agencies report annual or semi-annual measures and targets?

These more frequent measurements and targets should be reported to OMB at least semi-annually. Agencies should ensure that each report contains at least the following information:

1. A description of the measure, including:
    i. The high-risk area and why it is considered high-risk;
    ii. What is being reviewed;
    iii. How many items are being reviewed; and
    iv. Any other relevant information
2. The frequency of supplemental measurement and reporting under the Executive Order (i.e., how often will the area be measured and reported, the date reporting will occur). Optimally, the measures should be reported on a cycle different from the annual error measurement;
3. The measurement baseline;
4. How information from this measurement will help the program reduce improper payments; and
5. Actual or planned targets, including:
    i. The annual or semi-annual targets;
    ii. The analysis used to arrive at the targets;
    iii. Program performance against the targets; and
    iv. Any reasons for meeting, exceeding, or failing to meet the targets.

OMB will work with the agencies to determine how and when these measures and targets will be reported to the public.

3) Additional Measures & Targets on the Recovery of Improper Payments

l) What improper payments are agencies required to recover?

In accordance with the RAA, all agencies with more than $500 million in annual contract outlays are required to establish recovery audit programs to review, identify, and recover improper contract payments. Agencies with less than $500 million in annual contract payments are encouraged – but not required - to review contract payments if cost-effective.

m) Are agencies required to conduct recovery audit programs of contract, grant, or benefit payments, under the Executive Order?

No, the Executive Order does not create new requirements for agencies to conduct recovery audits of contract, grant, or benefit programs. The Executive Order requires more formal tracking and reporting of recovered improper payments under existing authorities.

n) Which agencies and programs should track recovery information?

All agencies are encouraged to identify and track improper contract, grants, and benefits payments, where applicable. For FY 2010, reporting information related to the identification and tracking of improper payments beyond what is already required by Part I and Part II of Appendix C to OMB Circular A-123, is optional. Beginning in FY 2011, agencies are required to annually report information related to identification, tracking, and recovery of improper grants, benefits, and contract payments, where applicable, to the improper payments website.

o) What information should agencies track on recovery of improper payments?

Agencies should track improper payments identified and recovered through various agency endeavors. As appropriate, agencies should identify improper payments identified and recovered through:

1. Statistical samples under the IPIA (e.g., improper payments identified in the sample to calculate a program's annual error measurement);
2. Agency post-payment reviews (e.g., normal agency post-payment reviews to determine the accuracy of payments or other activities designed to identify improper payments);
3. Recovery audits (e.g., recovery audits performed as part of the RAA or another initiative such as the Medicare Recovery Audit Contractors program);
4. IG reviews (e.g., IG investigations into improper payments or fraud);
5. Single Audit reports (e.g., results from Single Audit reviews);
6. Self-reported overpayments (e.g., a recipient notifies an agency that their payment was incorrect, and the recipient returns the overpayment); and
7. Reports from the public (e.g., reports of improper payments submitted through online websites, telephone hotlines, or other methods).

Agencies should contact OMB if they encounter challenges implementing this requirement.

p) How will agencies establish and report targets for recovering improper payments as required under Section 2(b)(iv) of the Executive Order?

During FY 2010, agencies should identify sources of improper payment information that could be used to track recovery information (such as those sources identified in Section 3 of the *Improper Payments Reporting* section of this guidance). Once these sources have been identified, agencies will establish a baseline of recoveries identified and recovered after they begin reporting this information in FY 2011 (or earlier). Agencies should report the recovery measurements, baselines, and targets to the improper payments website. After first reporting and establishing a baseline, agencies should work with OMB to establish and report targets for future recoveries, where applicable.

C) Reporting Deliverables as Required by Executive Order 13520

1) Accountable Official Report on Failure to Meet Targets or Plans for Two Consecutive Years

a) What must an agency do if it fails to meet its annual or semi-annual targets for two consecutive years or plans for ensuring access to high-priority programs for two consecutive years as required under Section 3(c) of the Executive Order?

If a high-priority program fails to meet the annual or semi-annual targets established under Section 2 of the Executive Order or to implement the measures of access plan (see guidance Section on the Accountable Official Report to the IG) for two or more consecutive years, that agency's accountable official must submit a report to the agency's head, IG, and Chief Financial Officer (CFO) describing, at a minimum:

1. The causes of the agency's failure to achieve the annual or semi-annual targets or implement the program access and participation plan; and
2. A remediation plan for the agency (or program) to meet its supplemental targets or plan. The remediation plan may include administrative, regulatory, or statutory changes that the program would need to reach its targets.

In addition, the report can contain other information, such as:

1. The status and impact of any planned or implemented corrective actions; and
2. Any statutory, regulatory, budgetary, or administrative impediments that have delayed the implementation of the corrective actions.

The agency head shall review the report, and consult with the IG, the CFO, and any other relevant personnel, on its content. The agency head shall forward a copy of the final report to the Director of OMB.

2) Accountable Official Annual Report to the IG

b) Which agencies must provide a report to their IGs in response to Section 3(b) of the Executive Order?

Accountable officials for those agencies that are identified as having at least one high-priority program must provide a report to their IGs that includes the IPIA program error rate measurement methodology, plans for meeting improper payment targets, and plans to ensure program access and participation by eligible beneficiaries (this report is further described in the section below). In addition, OMB has 30 days after the publication of annual PAR and AFR to direct agencies to provide a report on other programs that measure and report under the IPIA but that are not high-priority programs under the Executive Order.

c) What information must agencies provide to the IG?

Agencies with high-priority programs, and any other programs identified by OMB, must submit a report to the agency's IG containing:

1. A description of the agency's compliance with Part 1, Section E, Step 2, or Section F, of Appendix C to OMB Circular A-123. This information should include the IPIA program error measurement methodology, sample size and related calculations, results of annual measurements, and other measurement-related information as applicable;
2. The agency's plans and supporting analysis for meeting the reduction targets for improper payments in compliance with Part 1, Section E, Step 3 of Appendix C to OMB Circular A-123, including:
    i. Root causes of error in the program;
    ii. Corrective actions that are being implemented and their full implementation date;
    iii. The types of errors the corrective actions will address and their expected impact;
    iv. The anticipated costs of the corrective actions and their likely return on investment (e.g., amount of errors prevented or reduced for each dollar spent); and
    v. An explanation of the program's performance in meeting its reduction targets; and
3. The agency's plan, together with supporting analysis, for ensuring that initiatives undertaken to implement this order do not unduly burden program access (see Section 3 under *General Guidance* of this guidance) and participation by eligible beneficiaries. This plan should include any existing or planned measures of access.

d) When should agencies provide to the IG the Accountable Official Annual Report under Section 3(b) of the Executive Order?

Within 180 days of the Executive Order, agencies with high-priority programs must provide the initial report to the agency IG. Subsequently, an updated report for programs previously deemed high-priority programs that remain high-priority programs in future years, as well as reports for any programs newly identified as being high-priority, shall be submitted to the agency IG within 120 calendar days of the publication of the annual PAR or AFR.

3) Agency Head Quarterly High-Dollar Report to the IG

Within 180 calendar days of the Executive Order, the head of each agency with programs susceptible to significant improper payments under the IPIA (including agencies with high-priority programs) shall submit to the agency's IG and the Council of Inspectors General on Integrity and Efficiency (CIGIE), and make available to the public, a report on any high-dollar overpayments identified by the agency.

e) Section 3(f) of the Executive Order requires agency heads to submit quarterly reports on "high-dollar" overpayments. What is a "high-dollar" overpayment?

A high-dollar overpayment can be made to an individual or an entity. A high-dollar overpayment is any overpayment that is in excess of 50 percent of the correct amount of the intended payment under the following circumstances:

1. Where the total payment to an individual exceeds $5,000 as a single payment or in cumulative payments for the quarter; or
2. Where the payment to an entity (see definition of an entity in Section 5: *Agency Submission to the Improper Payments Website*) exceeds $25,000 as a single payment or in cumulative payments for the quarter.

Examples of overpayments that would need to be included in an agency's quarterly report on high-dollar overpayments include:

1. A single payment or cumulative payments to the wrong individual or entity that exceeds the respective $5,000 or $25,000 limit;
2. A single payment or cumulative payments to the correct individual of $6,500 when the intended amount was $3,000 (the payment is more than 50 percent higher than the intended amount, and the total payment is above $5,000, thus meeting both criteria to qualify as a high-dollar improper payment to an individual); and
3. Cumulative amounts of overpayments to an entity that exceed the 50 percent and $25,000 threshold during a quarter (e.g., even if an agency has an ongoing relationship with an entity and typically corrects overpayments or underpayments via its next payment cycle, it would need to report these improper payments if they are above the 50 percent and $25,000 amount for a quarter).

Given the potential significant resource and operational challenges agencies may face to implement this provision, OMB will work with agencies to implement this requirement.

f) Which sources should agencies utilize to identify high-dollar overpayments?

High-dollar overpayments should be identified by examining several sources of information available to agencies. For instance, agencies could identify high-value errors, where applicable, through:

1. Statistical samples conducted under the IPIA;
2. Agency post-payment reviews;
3. Recovery audits;
4. Agency IG reviews;
5. Self-reports; or
6. Reports from the public through internet and telephone hotlines, and other referrals.

g) What information should be included in reports on high-dollar overpayments?

Information in the report is subject to Federal privacy laws, regulations, and policies, and should not include information about outstanding improper payments or recipients that the agency has

referred, or anticipates referring to the Department of Justice for enforcement, collection, or other legal action. The report shall:

1. List all high-dollar overpayments identified by the agency during the quarter;
2. Describe whether each high-dollar over payment was made to an entity or individual, and the city/county and state where that entity or individual was located;
3. List the program responsible for each high-dollar overpayment error;
4. Describe any actions the agency has taken or plans to take to recover high-dollar overpayments (the report should address overall actions and strategies, and not focus on individual payments); and
5. Describe any actions the agency will make to prevent overpayments from occurring in the future (the report should address overall actions and strategies, and not focus on individual payments).

h) Which agencies must report on high-dollar overpayments? What if an agency has no high-dollar overpayments during a reporting period?

All agencies with programs susceptible to significant overpayments under the IPIA are required to submit reports on high-dollar overpayments. If an agency has no high-dollar overpayments during a reporting period, then it does not need to complete a report on high-dollar overpayments for that period. The agency should send a letter to the Controller of OMB to inform OMB that the agency had no high-dollar overpayment errors in the previous reporting period.

i) Where shall agencies make high-dollar reports "available to the public"?

Within 15 days of submission to the IG of the quarterly high-dollar overpayments report, agencies shall make these reports available to the public by, at a minimum, submitting them to the improper payments website. In addition, agencies may also make these reports available to the public through other means, such as by posting the quarterly high-dollar overpayment reports on their own website. If the agency has no high-dollar overpayments for that period, the agency shall submit a "no report" status to the improper payments website.

j) When shall agencies provide the Agency Head Quarterly High-Dollar Report to the IG?

Within 180 days of the executive order, the head of each agency shall submit a report on high-dollar overpayment errors to the IG, and publish this report. The first quarterly report on high-dollar overpayments shall cover the latest quarter for which information is available. Subsequent to the first report, agencies shall complete, submit, and publicize these reports at least once a quarter (i.e., four times per year) thereafter. Each quarterly report shall be completed, submitted, and published by the last day of each quarter.

4) Agency IG Responsibilities

k) What are the IG's responsibilities with respect to the accountable official annual reports on programs under Section 3(b) and the agency head quarterly high-dollar overpayment reports provided under Section 3(f)?

The agency IG shall review the reports provided by the agency under Sections 3(b) and 3(f) of the Executive Order. When reviewing the reports provided under these two sections, the agency IG shall assess the level of risk associated with the applicable programs, determine the extent of oversight warranted, and provide the agency head with recommendations, if any, for modifying the agency's methodology, improper payment reduction plans, program access and participation plans, corrective action plans, or internal controls.

l) How should the agencies respond to the IG recommendations, if any, presented to the agency under Section 3 of the Executive Order?

An agency shall follow the OIG Audit and Evaluation and Inspection follow-up and reporting process in accordance with the IG Act, as amended (5 U.S.C. Appendix 3). Management is responsible for monitoring follow-up activities and for reporting the status of actions taken to correct audit and evaluation and inspection findings. The IG Act also requires a report from management on final actions taken on audit and evaluation and inspection report recommendations, including the disposition of disallowed costs and future monetary savings associated with better utilization of resources. Any recommendations issued by agency IGs should be treated as "formal" audit recommendations under the "Yellow Book" standards (i.e., standards established by the Comptroller General for audits of Federal establishments, organizations, programs, activities and functions) or inspection or evaluation recommendations issued pursuant to the CIGIE "Standards for Quality Inspections" (the President's Council on Improvement and Efficiency (PCIE) standards which were adopted by CIGIE in 2009). Agencies are responsible for resolving audit recommendations in accordance with OMB Circular A-50 on Audit Follow-up.

5) Agency Identification of Entities with Outstanding Improper Payments

m) What is the purpose of identifying entities that have received the greatest amount of outstanding improper payments in high-priority programs?

As required by the Executive Order, the Government must make payments properly, while continuing to ensure that Federal programs serve and provide access to their intended beneficiaries. Although every effort is made to ensure that payments are made properly in the first instance, for various reasons this does not always occur, and recipients are required to cooperate with the Government to return those payments to which they are not entitled. When recipients fail to return an improper payment, the cost to the taxpayer is high.

Publishing information about entities that have received the greatest amount of outstanding improper payments furthers the Government's policy of reducing improper payments in three ways. First, notification about a proposed publication may motivate an entity to resolve its outstanding payment where other efforts to encourage repayment have failed. Second, the public may have additional information about an entity owing an outstanding improper payment that can assist the Government in its efforts to reduce the amount of the improper payment owed by an entity and prevent future improper payments from being made to the same entity. Third, making public information about entities that owe improper payments may encourage other entities to exercise greater diligence to resolve their own improper payments. By publicizing only those entities that owe the greatest amounts of improper payments, the Government is prioritizing its efforts toward those entities responsible for a greater portion of the improper payments problem in a given agency program.

n) How should agencies identify entities that have received the greatest amount of outstanding improper payments in high-priority programs?

For purposes of this guidance:

1. An entity is a non-individual that owes an outstanding improper payment. The term entity excludes an individual acting in either a personal or commercial capacity (that is, a sole proprietor) and Federal, state, and local government agencies; and
2. The term outstanding improper payment is an improper overpayment as determined by the agency, and which has not been paid as required.

Agencies with high-priority programs shall establish procedures for identifying at least three entities that have received the greatest amount of outstanding improper payments in these programs. Entities may be identified through tools such as recovery audits, post payment reviews, sampling in accordance with the IPIA, and agency Inspector General reviews.

o) How does an agency provide notice to an entity about a proposed publication on the Internet?

At least 30 calendar days prior to including an entity on a list of entities to be submitted for publication on the Internet, an agency shall send a notice to the entity informing the entity of:

1. The nature and amount of the outstanding improper payment owed by the entity, as determined by a final agency administrative decision; and
2. The intention of the agency to submit for publication information concerning the outstanding improper payment, a description of the information to be submitted for publication, a description of how the information will be published, an explanation of the entity's rights, and an explanation of the time frame within which the entity may exercise its rights.

For purposes of this guidance, "notice" means a written communication served in person or sent by first class mail to the last known address of an entity, its counsel, or its agent for service of process. Notice shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency. Notice may be combined with and made part of any notice of intent to establish or collect an outstanding improper payment that an agency sends to an identified entity.

p) How will agencies publicize the list of entities with the greatest amount of outstanding improper payments in high-priority programs?

Agencies will submit the list of entities with the greatest amount of outstanding improper payments in high-priority programs for publication on the improper payments website. Beginning on April 19, 2010, where feasible, and quarterly thereafter, agencies must submit information about entities that have received the greatest amount of outstanding improper payments in high-priority programs.

q) How can entities appeal the publication of their identity?

Agency procedures for allowing an entity to appeal the publication of its identity shall include the following:

1. Within 30 calendar days of receipt of the notice of proposed publication, an entity may submit to the agency a written argument objecting to the proposed publication;
2. The agency shall make a decision on the basis of all the information in the administrative record, including any submission made by an entity. The decision shall be made within 30 calendar days after receipt of any information submitted by the identified entity;
3. An entity may request a second appeal - that the agency reverses a decision to proceed with publication - by filing an appeal to the agency within 20 calendar days of the date of receipt of the agency's first decision. Such a request shall be in writing and supported by documentation. The agency shall grant such a request when the entity submits additional information that demonstrates, and the agency thereby concludes that the agency's identification of the entity as one that owes the outstanding improper payment is erroneous or that there are legal bars to publication;
4. If an entity fails to file a timely appeal, or if the agency denies the appeal, the agency will notify the entity of the final decision to publish, in writing, at least 10 calendar days prior to submitting the entity's information for publication; and
5. Agency decisions shall be in writing and shall include a summary of the facts and arguments presented, and the reviewing official's findings, analysis, and conclusions. Any decisions to proceed or not to proceed with publication shall be without prejudice to the Government's enforcement of any rights related to improper payments owed by the entity or future publication of the entity's information pursuant to Executive Order 13520 or other laws.

r) Does this guidance create any special rights?

This guidance is not intended to, and does not create, any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Further, this guidance is not intended to impose, and does not impose, liability on the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person for action taken pursuant to the guidance.

6) Agency Submission to the Improper Payments Website

s) What are agencies required to submit for the improper payments website as required under Section 2(b) of the Executive Order?

Agencies shall submit the following information, subject to Federal privacy policies and to the extent permitted by law:

1. The names of the accountable officials;

2. Current and historical rates and amounts of improper payments, including, where known and appropriate, causes of the improper payments;
3. Current and historical rates and amounts of recovery of improper payments, where appropriate (or, where improper payments are identified solely on the basis of a sample, recovery rates and amounts estimated on the basis of the applicable sample);
4. Targets for reducing as well as recovering improper payments, where appropriate; and
5. The entities that have received the greatest amount of outstanding improper payments (or, where improper payments are identified solely on the basis of a sample, the entities that have received the greatest amount of outstanding improper payments in the applicable sample).