



U.S. SENATE COMMITTEE ON

Finance

SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN

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For Immediate Release

Monday, April 5, 2004

Grassley Works to Ensure Disclosure of Improper Payments Made by Government Agencies

WASHINGTON — Sen. Chuck Grassley is keeping the heat on the Office of Management and Budget to revise its guidelines to federal agencies on reporting improper payment information to Congress.

Grassley is protesting new guidelines that say agencies don't need to report improper payments in excess of \$10 million if the payments are less than 2.5 percent of program spending. Grassley says if this limit had been applied in previous years, most of the agencies that reported improper payments in 2001 and 2002 would not have been required to do so.

For example, the Social Security Administration reported \$1.3 billion in improper payments in the disability insurance program. This figure is 2.2 percent of program expenditures, so it would not meet the new 2.5 percent threshold set by the Office of Management and Budget.

"The new guidelines appear to let federal agencies off the hook even when billions of dollars in improper payments have been made," Grassley said. "That violates the spirit and letter of the law passed by Congress, to make sure information about improper payments saw the light of day and agencies were held accountable for such expenditures."

The *Improper Payments Information Act of 2002* requires federal agencies to identify programs that are vulnerable to improper payments and to estimate annually the amount of underpayments and overpayments made by these programs. For any program where improper payments are estimated to exceed \$10 million, the agency is to include a report on actions being taken to reduce the improper payments.

Improper payments by the federal government exceeded \$20 billion in 2001 and again in 2002.

Grassley has also taken issue with the Office of Management and Budget's new instruction on submitting estimates, which he says will result in a reporting delay of nearly two years. The new guidelines were issued by the Office of Management and Budget last May. The Office of Management and Budget evaluates, formulates and coordinates management procedures within and among federal departments and agencies.

Grassley is a senior member of the Senate Budget Committee and chairman of the Finance Committee. The text of Grassley's letter to Director Joshua Bolten follows here. It is the second letter from Grassley on this matter. The text of his January letter is also included in this document.

April 5, 2004

The Honorable Joshua Bolten
Director
Office and Management and Budget
Eisenhower Executive Office Building
Washington D.C. 20503

Dear Mr. Bolten:

I was deeply troubled by the response I received to my earlier letter regarding OMB's guidance implementing the Improper Payments Information Act of 2002 (P.L. 107-300).

The statutory language clearly and unequivocally states that agencies are to estimate and report the total amount of improper payments identified in accordance with OMB guidance, and with respect to improper payments in excess of \$10 million, report on the actions taken to reduce such payments.

Given the explicit reporting requirements with respect to improper payments in excess of \$10 million, it is inconceivable that OMB could devise guidance that would result in the failure to report improper payments in excess of \$10 million. Yet, the guidance issued by OMB explicitly states that agencies "need not report" improper payments in excess of \$10 million, if agencies "believe" such errors are less than 2.5% of program payments.

Even if OMB could reconcile the inherent contradiction between the 2.5% standard and the \$10 million threshold, the process by which agencies are instructed to apply the standard is fraught with peril.

OMB's guidance instructs agencies to identify programs and activities "it believes are susceptible to significant erroneous payments" without "making a statistically valid estimate." In other words, if agencies believe their improper payments are less than 2.5%, they don't have to go to the trouble to find out whether or not they are right.

The assertion that those agencies that previously reported under Section 57 of Circular A-11 will continue to report all erroneous payments without regard to the 2.5% standard is belied by the fact that Section 57 was eliminated from Circular A-11 in July of 2003.

OMB's guidance to the Social Security Administration regarding "unavoidable" payments also seems to contradict the assertion that agencies previously subject to Section 57 will continue to report erroneous payments under the same standards they have used in the past.

Finally, the statutory language requires agencies to submit improper payment estimates in their

annual budget submissions for fiscal years after FY 2003. However, OMB's guidance instructs agencies to submit estimates in their Performance and Accountability Reports for fiscal years ending on or after September 30, 2004. This guidance will result in a reporting delay of nearly two years.

Given the fact that OMB's guidance will have the effect of understating and delaying the reporting of improper payment information to Congress, I would encourage OMB to promptly review its guidance and revise it accordingly. To do otherwise, shortchanges taxpayers and denies Congress the opportunity to review the amount of money that would otherwise be identified and reported.

I know you share my commitment to insuring that the government remains true to the statute when identifying improper payment rates. Thank you in advance for your assistance. Please keep me advised of your progress in this matter. I would appreciate an update no later than June 2, 2004.

Sincerely,

Charles E. Grassley
United States Senator
Chairman, Senate Finance Committee

January 9, 2004

The Honorable Joshua B. Bolten
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Mr. Bolten,

We are writing to express our concern about guidance issued by the Office of Management and Budget to assist agencies in implementing the Improper Payments Act of 2002 (Act) P.L. 107-300. OMB's guidance appears to ease agency reporting of improper payments by eliminating the need for risk assessments if an agency concludes that improper payments do not exceed 2.5 percent **and** \$10 million of program spending. The statute itself required agency risk assessments and corrective action plans to be completed on all programs and activities where improper payments are estimated to exceed \$10 million. OMB also issued supplemental guidance to the Social Security Administration (SSA) to address the reporting of improper payments that are considered to be "unavoidable." Specifically, OMB decided that payments determined to be "unavoidable" would no longer need to be reported as improper payments.

This guidance appears to change the parameters of what is and is not reported. Moreover, it appears that OMB guidance will artificially reduce improper/erroneous payment figures. In other words, the improper payment figures that will eventually be reported to the public will look better, and feel better, than they really are, and the public and the Congress will have a less accurate

understanding of the integrity of our federal programs.

Federal agencies are responsible for managing tens of thousands of programs and activities and expending hundreds of billions of dollars annually to address the needs of the American public. As implementers of these programs and activities, agencies have a stewardship responsibility and, as such, must take all reasonable actions to design, implement and manage them in a manner which ensures that program objectives are met and that controls exist to safeguard federal funds from improper or erroneous payments. In the past several years the General Accounting Office (GAO) and OMB reported partial estimates of erroneous payments amounting to tens of billions of dollars annually; these reports have also noted that government-wide estimates of improper payments do not exist.

The Improper Payments Information Act of 2002 (Act) was enacted on November 26, 2002, to address this problem. It requires all federal agencies to estimate improper payments in their programs and activities and to report these amounts to the Congress annually. The Act gave OMB a significant role in its implementation, by requiring OMB to issue agency guidance on how to implement its provisions. OMB issued this guidance in May 2003 and has been working with agencies to clarify the Act's requirements and respond to agency questions on implementation and reporting issues.

Because of the magnitude and implications of improper payments government-wide, and the implications of OMB's guidance, it is critical that agencies take their responsibilities under the Act seriously. Agency reports must be the epitome of honest and complete disclosure on the amounts of improper payments occurring, their causes, barriers to eliminating these causes, planned actions to reduce or eliminate these payments, and the results of those actions.

We consider the reports required by the Act to provide critical information that will assist in the Committee's oversight and monitoring of federal programs and activities, as well as the Congress' evaluation of agency management and control over federal funds. The information on improper payments is critical to Congress' understanding of existing problems and its ability to legislate to reduce improper payment levels. Only with careful analysis of this information can we ensure the most effective, efficient and economical operation of federal programs.

In light of the importance of the improper payment issue, and the concerns that we have expressed regarding the implementation of the guidance recently issued by OMB, we would appreciate receiving responses to the attached questions.

Thank you in advance for your attention to this matter. We would appreciate receiving OMB's responses by January 28, 2004.

Sincerely,

Charles E. Grassley
Chairman

Max Baucus
Ranking Member

IMPROPER PAYMENT QUESTIONS

1. OMB's Improper Payments Information Act guidance issued on May 21, 2003, called for all agencies covered by Section 57 of OMB Circular A-11 to continue reporting improper payment information as required in previous years. Please describe whether or not the agencies covered by Section 57 provided to OMB all of the information required by Section 57 for the past three-year period.

- a. For each agency identified, please summarize the information provided to OMB, including the amounts of improper payments, causes and results of corrective action(s), if any.
- b. Please identify each agency covered by Section 57 that did not provide OMB with all the required information and each program for which the information was not provided. Please describe the nature of each reporting deficiency, and any action(s) OMB took to correct the deficiency.

2. The Improper Payments Information Act requires agencies to report improper payments to Congress each year. When these payments are estimated to exceed \$10 million or more in any program or activity, agencies are required to report additional information as well. However, OMB guidance modifies this reporting requirement by adding an additional requirement: that improper payments exceed both 2.5 percent and \$10 million.

- a. Please explain in detail OMB's justification for imposing the 2.5 percent standard.
- b. Please list the agencies and programs that have previously reported improper payments under Section 57 of Circular A-II that would not meet the two-prong OMB guidance standard, in other words how much of the previously reported improper payments exceed the \$10 million threshold, but not the 2.5 percent threshold?

3. Please explain why 2.5 percent of program spending on improper payments is a reasonable threshold for additional reporting requirements, especially given that much smaller percentages could amount to hundreds of millions or billions of dollars in improper payments in programs such as Medicare or SSA's OASI and DI programs?

4. GAO has reported that the principal cause of improper payments is a breakdown in systems of internal controls. The Federal Manager's Financial Integrity Act (FMFIA) has required annual executive agency reviews and reporting on internal controls since about 1984. OMB was heavily involved in FMFIA's implementation across the government. Why is it that the problems that cause improper payments weren't previously identified and corrected? Are agencies taking their FMFIA review and reporting responsibilities seriously?

5. What is OMB doing to ensure that federal agencies take proactive measures to improve weak internal controls and

implement safeguards to ensure against improper payments?

SSA-Specific Issues

1. OMB provided SSA with supplemental guidance on improper payments reporting that establishes a distinction between “avoidable” and “unavoidable” payments – terms that have not been part of the general improper payment lexicon. Why did OMB decide to adopt this distinction in this context?

2. For items considered to be “unavoidable”, we understand that OMB guidance would not require agencies to report that information to the Congress under the Improper Payments Information Act. Is our understanding correct? Would so-called “unavoidable” improper payment statistics be collected at all? Would they be reported to OMB?

3. What dollar impact does the introduction of this avoidable/unavoidable distinction have on the amounts of improper payments reported by SSA for 2003? What would the improper payment rate or amount be for SSA for 2003 under 2002 improper payment definitions?

4. If statutory or regulatory provisions require agencies to make payments that the agency otherwise would consider improper, why shouldn't an agency communicate this to the Congress so that the Congress can consider appropriate legislative solutions?

5. Is SSA the only agency where “unavoidable” and “avoidable” improper payment distinctions arise? If not, which other agencies have raised these issues and what has OMB's response to them been?

6. Another area classified as “unavoidable” is payment made for Title II based on earnings estimates because of program design requirements. Again, why should this information not be reported, tracked, and updated to identify agency actions to recover improperly paid amounts and identify the status of corrective actions?

7. Why shouldn't “Undetected Error” amounts be reported since it appears that they would represent amounts that were paid that should not have been paid – are these not improper payments?

8. OMB's SSA-specific guidance for the category “Undetected Error” concluded that OASI, DI, and SSI should not include estimates of these amounts as improper payments unless SSA had evidence that a specific type of erroneous payment was made. Wouldn't the statistical sampling you require in other guidance provide the estimates of these payments? If so, why not report the results?

