



**OFFICE OF INSPECTOR GENERAL**  
**EXPORT-IMPORT BANK**  
*of the UNITED STATES*

**EVALUATION OF  
EXPORT-IMPORT BANK OF THE UNITED STATES'  
COMPLIANCE WITH THE  
IMPROPER PAYMENTS ELIMINATION  
AND RECOVERY ACT OF 2010**

**Evaluation Report**  
**March 12, 2012**  
**OIG-EV-12-01**



To: Fred P. Hochberg  
Chairman and President

Joseph Sorbera  
Vice President – Controller

From: Osvaldo L. Gratacos   
Inspector General

Subject: Evaluation of Export-Import Bank of the U.S.' Compliance with the  
Improper Payments Elimination and Recovery Act of 2010

Date: March 12, 2012

This memorandum transmits Evaluation Report OIG-EV-12-01, Evaluation of Export-Import Bank of the U.S.' (Ex-Im Bank) Compliance with the Improper Payments Elimination and Recovery Act (IPERA) of 2010. This evaluation was initiated by the Office of Inspector General of the Ex-Im Bank to determine whether Ex-Im Bank is in compliance with the requirements of the IPERA of 2010.

The evaluation found that Ex-Im Bank properly determined whether payments were proper or improper in their risk assessment. In addition, Ex-Im Bank completed the "Improper Payment Risk Assessment Questionnaire for FY 2010" as part of their risk assessment as well as issued a summary documenting the internal controls encompassing improper payments. While Ex-Im Bank's efforts were positive, in our opinion, improvements are needed to better comply with the IPERA of 2010. We made two recommendations to address these findings. Management did not concur with the first finding and recommendation and will seek OMB feedback on the methodology. Management concurred with the second finding and recommendation.

We appreciate the courtesies and cooperation extended to us during the evaluation. If you have any questions or comments regarding the report, please contact me at (202) 565-3992 or Christine Staley at (202) 565-3996.

Attachment

cc: Alice Albright, Senior Vice President and Chief Operating Officer  
Audit Committee  
David Sena, Senior Vice President and Chief Financial Officer  
Patricia Wolf, Supervisor, Financial Reporting

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## EXECUTIVE SUMMARY

The Office of Inspector General (OIG) conducted an evaluation to determine whether the Export-Import Bank of the United States (Ex-Im Bank) is in compliance with the requirements of the Improper Payments Elimination and Recovery Act (IPERA) of 2010.

Under IPERA, an agency is required to review all programs and activities and identify those programs that are susceptible to significant improper payments and publish improper payment estimates in their annual Performance and Accountability Report (PAR) or Annual Financial Report (AFR).

Office of Management and Budget Memorandum 11-16 (OMB M-11-16), which provides guidance on the implementation of IPERA, defines improper payment in a loan guarantee program, such as those administered by Ex-Im Bank, as including "disbursements to intermediaries, third-parties for default, delinquencies, interest... that are based on incomplete, inaccurate, or fraudulent information [emphasis added]... [or] that are not in compliance with law, program regulations, or agency policy."

OMB M-11-16 further defines significant improper payments "...as gross annual improper payments in the program exceeding (a) both 2.5 percent of program outlays and \$10,000,000 of all program or activity payments made during the Fiscal Year (FY) reported or (b) \$100,000,000 regardless of the improper payment percentage of total program outlays."

Ex-Im Bank reviewed all programs and activities and identified three programs that were susceptible to significant improper payments in FY 2010: Administrative Expenses (7,683 transactions totaling \$26.8 million), Claim Payments (242 transactions totaling \$231 million), and Loan Disbursements (27 transactions totaling \$2.1 billion). Ex-Im Bank identified 84 improper payment transactions totaling approximately \$1.39 million during FY 2010. Ex-Im Bank assessed the risk of improper payments associated with these three areas to be "low" due to the internal controls in place and the nature of these disbursements.

However, with regards to their risk assessment in Claim Payments, we found that Ex-Im Bank did not include in their improper payment risk assessment the claim payments that were later found to have been based on fraudulent information. The OIG - Office of Investigations (OI) identified 31 fraudulent transactions totaling approximately \$11.2 million in claim payments under Ex-Im Bank guarantee programs in FY 2010. Had Ex-Im Bank included these claim payments in their assessment, the improper payment totals for the Claim Payments area would have been 4.8 percent of the program outlays exceeding the threshold established by IPERA. This, in turn, would have required Ex-Im Bank to conduct further steps to identify and implement a plan to reduce improper payments.

Finally, we found that even though Ex-Im Bank completed the "Improper Payment Risk Assessment Questionnaire for FY 2010" and issued a summary of their risk assessment documenting the internal controls encompassing improper payments, Ex-Im Bank does not have in place a formal policy defining the procedural requirements that must be performed in order to comply with the IPERA. The lack of formal policy and process increases the potential for inconsistencies by staff upon repeating the process in later cycles and comparing results to historical baseline data.

We recommend the Office of Controller (OC) include claim payments based on fraudulent information in the improper payment risk assessment and determine whether additional steps should be taken in accordance with OMB M-11-16. We also recommend the OC develop and adopt a formal written policy that provides the procedural requirements to ensure consistency in future reviews and to comply with all of the applicable IPERA provisions. Management did not concur with the first finding and recommendation and will provide OMB their methodology for review. Management concurred with the second finding and recommendation (see Appendix A for management's response).

## BACKGROUND

The Improper Payments Elimination and Recovery Act (IPERA) of 2010 (P.L. No. 111-204) requires that an agency review all programs and activities and identify those programs that are susceptible to significant improper payments and publish improper payment estimates in their annual Performance and Accountability Report (PAR) or Annual Financial Report (AFR).

The Office of Management and Budget (OMB) issued a government-wide guidance on the implementation of IPERA (OMB M-II-16, dated April 14, 2011). The guidance explains that, under IPERA, agencies must:

- (1) Review all programs and activities and identify those that are susceptible to significant improper payment. "Significant improper payments" are defined as gross annual improper payments in the program exceeding (a) both 2.5 percent of program outlays and \$10,000,000 of all program or activity payments made during the Fiscal Year (FY) reported or (b) \$100,000,000 regardless of the improper payment percentage of total program outlays;
- (2) If the programs and activities identified reach the significant improper amount of improper payments in programs and activities for those programs that are identified as susceptible to significant improper payments;
- (3) Implement a plan to reduce improper payments; and
- (4) Report estimates of the annual amount of improper payments in programs and activities and progress in reducing them.

OMB guidance has defined an improper payment as 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. The term "payment" means "any payment or transfer of Federal funds (including a commitment for future payment, such as cash, securities, loans, loan guarantees, and insurance subsidies) to any non-Federal person or entity that is made by a Federal agency..."

For purposes of a loan guarantee program, such as those administered by Export Import Bank of the United States (Ex-Im Bank), an improper payment "may include disbursements to intermediaries, third-parties for default, delinquencies, interest and other subsidies, or other payments that are based on incomplete, inaccurate, or fraudulent information [emphasis added]... [or] that are not in compliance with law, program regulations, or agency policy."

Ex-Im Bank identified the following three program areas as susceptible to significant improper payments in FY 2010: Administrative Expenses, Claim Payments, and Loan Disbursements. These programs are described below.

### Administrative Expenses

Ex-Im Bank has defined three categories of administrative disbursements: compensation and benefits, rental payments (headquarters building) and other administrative payments. Compensation and benefits are processed outside of the Bank by General Services Administration's Kansas City, MO payroll processing center, and rental payments are handled through the intra-government payment system. The remainder of administrative payments totaled \$26.8 million in FY 2010 with 7,683 transactions.

### Claim Payments

Ex-Im Bank loan guarantees cover the repayment risks on the foreign buyer's debt obligations incurred to purchase U.S. exports. Ex-Im Bank guarantees to a lender that, in the event of a payment default by the borrower, it will pay to the lender the outstanding principal and interest on the loan.

Ex-Im Bank's Export Credit Insurance Program helps U.S. exporters sell their goods overseas by protecting them against the risk of foreign-buyer or other foreign-debtor default for political or commercial reasons, allowing them to extend credit to their international customers.

Ex-Im Bank disbursed 242 transactions in claim payments during FY 2010 totaling \$231 million. The Claims and Recoveries Section of the Office of the Treasurer is responsible for processing requests for disbursements when paying claims, expenses relating to paying claims, and a participant's share of recoveries or related expenses.

### Loan Disbursements

Ex-Im Bank offers fixed-rate loans directly to foreign buyers of U.S. goods and services. There were 27 transactions designated as loan disbursements for FY 2010 totaling \$2.1 billion. Once a transaction becomes legally operative, the Operations & Data Quality Division (Operations) reviews the supporting documentation prior to approving a disbursement request in Loan and Guarantee Accounting System (LGA). After its review, Operations signs the disbursement approval and sends the signed document to Program Accounting and Servicing (PAS) along with the borrower's request providing payment account information. The PAS staff initiates the disbursement in LGA, applies the exposure fee, prints the disbursement voucher, and submits the voucher to a certifying officer who signs the voucher and forwards it to the Cash Control Division for remittance of the funds. The actual cash disbursement is reduced by the amount of financed fee.

Ex-Im Bank identified 84 improper payment transactions totaling approximately \$1.39 million during FY 2010. Ex-Im Bank assessed the risk of improper payments associated with these three areas to be low due to the internal controls in place and the nature of these disbursements.

According to OMB M-11-16, the annual estimates of improper payments reported in the PAR or AFR should coincide with the fiscal year being reported, to the extent possible. Agencies may utilize a different 12-month reporting period if it has been approved by OMB. For example, agencies may report based on the previous fiscal year's data if it has been approved by OMB (e.g., for the FY 2011 PAR or AFR reporting, agencies may report on FY 2010 data if approved by OMB). Ex-Im Bank has received an approval from OMB to report improper payments information one year in arrears and therefore reported on FY 2010 data in FY 2011.



## **OBJECTIVE**

The objective of this evaluation was to determine whether Ex-Im Bank is in compliance with the requirements of the IPERA.

## EVALUATION RESULTS

### A. CLAIM PAYMENTS RELATING TO FRAUDULENT ACTIVITIES NEEDED TO BE INCLUDED IN THE IMPROPER PAYMENT RISK ASSESSMENT

Based on our review of the transactions sampled, Ex-Im Bank properly determined whether payments were proper or improper in their risk assessment. Our review, however, found that Ex-Im Bank did not include in their improper payment risk assessment the claim payments that were later found to be based on fraudulent information. As such, the total number and value of improper payments reported by Ex-Im Bank for FY 2010 was understated.

OMB M-11-16 states that 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."

We sought clarification from OMB on this issue and confirmed that claim payments that were later found to have been based on fraudulent information underlying the transaction should have been considered as improper payments for reporting purposes.

We contacted Office of Inspector General [OIG] - Office of Investigations (OI) for information on claim payments relating to fraudulent activities. OI identified 31 transactions totaling approximately \$11.2 million in fraudulent claim payments in FY 2010. Had Ex-Im Bank included these claim payments in their assessment, the improper payment totals for the Claim Payments area would have been 4.8 percent of the program outlays. Therefore, Ex-Im Bank would have exceeded the threshold established by OMB M-11-16, which is set at "both 2.5 percent of program outlays and \$10,000,000 of all program or activity payments made during the fiscal year reported."

Exceeding this threshold would have required Ex-Im Bank to conduct additional steps to comply with guidance provided in OMB M-11-16. Some of the additional steps listed in the OMB M-11-16 are: obtain a statistically valid estimate of the annual amount of improper payments, identify reasons for why the program or activity is at risk of improper payments, and put in place a corrective action plan to reduce them.

Based on our discussion with Office of the Controller (OC) staff, the omission was due to a different understanding of what constituted an improper payment OC staff did not believe claim payments for a guarantee needed to be considered as improper since a guaranteed transaction represented a business relationship between Ex-Im Bank and the financial institution, and not with the borrower.

## **Recommendation 1**

The OC should include claim payments based on fraudulent information in the improper payment risk assessment and determine whether additional steps should be taken in accordance with OMB M-11-16.

## **Management Response**

Management did not concur with this finding and recommendation. Ex-Im Bank guarantees provide unconditional coverage in the event of default. Under the term of the guarantee agreement, Ex-Im Bank is required to make the claim payment even if the borrower obtained the underlying credit from the guaranteed lender by providing fraudulent information and/or documentation to the lender. Management will provide OMB their methodology for calculating improper payments to obtain OMB concurrence. Any changes suggested by OMB will be reviewed and incorporated into OC procedures.

## **OIG Comment**

We will work with the OC once the OC receives OMB's feedback on the methodology.

## **B. A FORMAL POLICY FOR THE IMPROPER PAYMENTS RISK ASSESSMENT IS NEEDED**

Ex-Im Bank completed the "Improper Payment Risk Assessment Questionnaire for FY 2010" as part of their risk assessment. The questionnaire was built based on a recommendation from the Ex-Im Bank internal auditor in a FY 2008 review. Ex-Im Bank also issued a summary of their risk assessment documenting the internal controls encompassing improper payments. However, Ex-Im Bank does not have in place a formal policy defining the procedural requirements that must be performed in order to comply with IPERA.

The lack of formal policy and process increases the potential for inconsistencies by staff upon repeating the process in later cycles and comparing results to historical baseline data. Further, Government Accountability Office (GAO)'s "Standards for Internal Control in the Federal Government," dated November 1999, identified Control Environment as one of the five standards for internal control. GAO stated "...a good internal control environment requires that the agency's organizational structure clearly define key areas of authority and responsibility and establish appropriate lines of reporting. The environment is also affected by the manner in which the agency delegates authority and responsibility throughout the organization. This delegation covers authority and responsibility for operating activities, reporting relationships, and authorization protocols."

## **Recommendation 2**

The OC should develop and adopt a formal written policy that provides the procedural requirements to ensure consistency in future reviews and to comply with all of the applicable IPERA provisions.

**Management Response**

Management concurred with this recommendation and will develop written procedures by May 31, 2012.

**OIG Comment**

When accomplished, the above action should satisfy this recommendation.

## **SCOPE AND METHODOLOGY**

The scope of the evaluation focused on Ex-Im Bank's risk assessment and compliance over IPERA for FY 2010.

We selected 10 of 84 improper payment transactions to determine whether these transactions were correctly classified by Ex-Im Bank as improper.

We also selected 15 of all other payments to determine whether these transactions were correctly classified by Ex-Im Bank as proper.

We interviewed key Ex-Im Bank staff from the OC to obtain relevant information/documentation pertinent to this evaluation. We also contacted the OMB official residing in the Office of Federal Financial Management who was responsible for the OMB M-11-16 guidance to clarify the requirements.

We analyzed data obtained from the OC staff, as well as other information available such as claim payments information from the OIG – OI, IPERA of 2010, and OMB M-11-16.

We conducted our fieldwork from January 5, 2012, to February 8, 2012.

We performed this evaluation because OMB M-11-16 requires that each agency's Inspector General review the improper payment reporting in the agency's PAR or AFR, and accompanying materials, to determine if the agency is in compliance with the requirements.

We conducted this evaluation in accordance with the "Quality Standards for Inspection and Evaluation," dated January 2011, issued by the Council of the Inspectors General on Integrity and Efficiency.

## ACRONYMS

AFR	Annual Financial Report
Ex-Im Bank or the Bank	Export Import Bank of the United States
FY	Fiscal Year
GAO	Government Accountability Office
IPERA	Improper Payments Elimination and Recovery Act of 2010
LGA	Loan and Guarantee Accounting System
OC	Office of the Controller
OI	Office of Investigations
OIG	Office of Inspector General
OMB	Office of Management and Budget
Operations	Operations and Data Quality Division
PAR	Performance and Accountability Report
PAS	Program Accounting and Servicing


## **APPENDIX A**

Management Response Dated March 9, 2012

**MEMORANDUM**

March 9, 2012

To: Christine Staley  
Senior Auditor

From: Joseph Sorbera   
Controller

Subject: Draft Report on the Evaluation of Compliance with the Improper Payments Elimination and Recovery Act of 2010 – Response to Recommendations

Following are responses to the recommendations made in the above referenced report.

Recommendation 1

The OC should include claim payments based on fraudulent information in the improper payment risk assessment and determine whether additional steps should be taken in accordance with OMB M-11-16.

Response

Ex-Im's medium term guarantees provide unconditional coverage in the event of default. Except in certain instances of noncompliance with the terms of the guarantee agreement between Ex-Im and the guaranteed party, Ex-Im cannot deny payment of the claim. Under the terms of the guarantee agreement Ex-Im is required to make the claim payment even if the borrower obtained the underlying credit from the guaranteed lender by providing fraudulent information and/or documentation to the lender.

The IPERA defines an improper payment as:

- (A) ...any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and
- (B) includes any payment to an ineligible recipient, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), and any payment that does not account for credit for applicable discounts.

Payment of a claim in accordance with the guarantee agreement, even if fraud was involved in obtaining the credit, does not fit the IPERA definition of an improper payment. The IPERA is describing an improper payment as a payment where a mistake is made in the payment process. In the claim scenario described above, there is no mistake. The claim payment is contractually required, it is for the correct amount, it is made to the correct eligible recipient, and is therefore



not improper. In fact, the failure of Ex-Im to pay the claim would likely result in the guaranteed party taking legal action against Ex-Im.

When it is determined that fraud is involved in a transaction, recovery action is taken against the party that perpetrated the fraud (the borrower or exporter), not the guaranteed lender who received Ex-Im's claim payment. Ex-Im has no legal basis to seek recovery from the guaranteed lender, further confirmation that the payment to the guaranteed lender was not improper.

Management believes that claim payments made in accordance with the credit agreement, even if fraud was involved when the borrower obtained the credit from the lender, is not an improper payment. Ex-Im will provide OMB our methodology for calculating improper payments to obtain their concurrence. Any changes suggested by OMB will be reviewed and incorporated into our procedures. Ex-Im will provide the IG's office a copy of the finalized procedures with OMB concurrence.


#### Recommendation 2

The OC should develop and adopt a formal written policy that provides the procedural requirements to ensure consistency in future reviews and to comply with all of the applicable IPERA provisions.

#### Response

We agree with the recommendation and will develop written procedures by May 31, 2012.

cc: Alice Albright  
David Sena  
Patricia Wolf



Office of Inspector General  
Export-Import Bank *of the* United States  
811 Vermont Avenue, NW  
Washington, DC 20571  
202-565-3908  
[www.exim.gov/oig](http://www.exim.gov/oig)