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OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

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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-123¹. 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, 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 because no databases or other resources exist, 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, even though verifying information does exist in third-party databases or other resources (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) Annual or Semi-annual Measures and Targets

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 dollar 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.

	<i>More Control</i>	<i>Less Control</i>
<i>High-Impact</i>	<ul style="list-style-type: none"> • Fraud • System errors • Agency policies 	<ul style="list-style-type: none"> • Statutory definitions and requirements
<i>Low-Impact</i>	<ul style="list-style-type: none"> • Infrequent data entry errors by Federal agencies (with low-dollar impact) 	<ul style="list-style-type: none"> • 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).

Presidential Documents

Executive Order 13520 of November 20, 2009

Reducing Improper Payments

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in the interest of reducing payment errors and eliminating waste, fraud, and abuse in Federal programs, it is hereby ordered as follows:

Section 1. Purpose. When the Federal Government makes payments to individuals and businesses as program beneficiaries, grantees, or contractors, or on behalf of program beneficiaries, it must make every effort to confirm that the right recipient is receiving the right payment for the right reason at the right time. The purpose of this order is to reduce improper payments by intensifying efforts to eliminate payment error, waste, fraud, and abuse in the major programs administered by the Federal Government, while continuing to ensure that Federal programs serve and provide access to their intended beneficiaries. No single step will fully achieve these goals. Therefore, this order adopts a comprehensive set of policies, including transparency and public scrutiny of significant payment errors throughout the Federal Government; a focus on identifying and eliminating the highest improper payments; accountability for reducing improper payments among executive branch agencies and officials; and coordinated Federal, State, and local government action in identifying and eliminating improper payments. Because this order targets error, waste, fraud, and abuse—not legitimate use of Government services—efforts to reduce improper payments under this order must protect access to Federal programs by their intended beneficiaries.

Sec. 2. Transparency and Public Participation.

(a) Within 90 days of the date of this order, the Director of the Office of Management and Budget (OMB) shall:

(i) identify Federal programs in which the highest dollar value or majority of Government-wide improper payments occur (high-priority programs);

(ii) establish, in coordination with the executive department or agency (agency) responsible for administering the high-priority program annual or semi-annual targets (or where such targets already exist, supplemental targets), as appropriate, for reducing improper payments associated with each high-priority program;

(iii) issue Government-wide guidance on the implementation of this order, including procedures for identifying and publicizing the list of entities described in subsection (b)(v) of this section and for administrative appeal of the decision to publish the identity of those entities, prior to publication; and

(iv) establish a working group consisting of Federal, State, and local officials to make recommendations to the Director of OMB designed to improve the Federal Government's measurement of access to Federal programs by the programs' intended beneficiaries. The working group's recommendations shall be prepared in consultation with the Council of Inspectors General on Integrity and Efficiency (CIGIE) and submitted within 180 days of the date of this order, and the recommended measurements may be incorporated by the Secretary of the Treasury in the information published pursuant to subsection (b) of this section.

(b) Within 180 days of the date of this order, the Secretary of the Treasury in coordination with the Attorney General and the Director of OMB, shall

publish on the Internet information about improper payments under high-priority programs. The information shall include, subject to Federal privacy policies and to the extent permitted by law:

- (i) the names of the accountable officials designated under section 3 of this order;
- (ii) current and historical rates and amounts of improper payments, including, where known and appropriate, causes of the improper payments;
- (iii) 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);
- (iv) targets for reducing as well as recovering improper payments, where appropriate; and
- (v) 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).

Information on entities that have received the greatest amount of outstanding improper payments shall not include any referrals the agency made or anticipates making to the Department of Justice, or any information provided in connection with such referrals.

(c) Within 180 days of the date of this order, the Secretary of the Treasury in coordination with the Attorney General and the Director of OMB and in consultation with the CIGIE, shall establish a central Internet-based method to collect from the public information concerning suspected incidents of waste, fraud, and abuse by an entity receiving Federal funds that have led or may lead to improper payments by the Federal Government.

(d) Agencies shall place a prominently displayed link to Internet-based resources for addressing improper payments, including the resources established under subsections (b) and (c) of this section, on their Internet home pages.

Sec. 3. Agency Accountability and Coordination.

(a) Within 120 days of the date of this order, the head of each agency responsible for operating a high-priority program shall designate an official who holds an existing Senate-confirmed position to be accountable for meeting the targets established under section 2 of this order without unduly burdening program access and participation by eligible beneficiaries. In those agencies where the majority of payments are isolated to a single component, the head of the agency shall name a second accountable official for that component whose sole responsibility would be for program integrity activities and, as appropriate, shall consolidate and coordinate all program integrity activities within the component.

(b) Within 180 days of the date of this order, each agency official designated under subsection (a) of this section, or otherwise designated by the Director of OMB, shall provide the agency's Inspector General a report containing:

- (i) the agency's methodology for identifying and measuring improper payments by the agency's high-priority programs;
- (ii) the agency's plans, together with supporting analysis, for meeting the reduction targets for improper payments in the agency's high-priority programs; and
- (iii) the agency's plan, together with supporting analysis, for ensuring that initiatives undertaken pursuant to this order do not unduly burden program access and participation by eligible beneficiaries.

Following the receipt and review of this information, the agency Inspector General 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, or program access and participation plans.

(c) If an agency fails to meet the targets established under section 2 of this order or implement the plan described in subsection (b)(iii) of this section for 2 consecutive years, that agency's accountable official designated under subsection (a) of this section shall submit to the agency head, Inspector General, and Chief Financial Officer a report describing the likely causes of the agency's failure and proposing a remedial plan. The agency head shall review this plan and, in consultation with the Inspector General and Chief Financial Officer, forward the plan with any additional comments and analysis to the Director of OMB.

(d) Within 180 days of the date of this order, the Chief Financial Officers Council (CFOC) in consultation with the CIGIE, the Department of Justice, and program experts, shall make recommendations to the Director of OMB and the Secretary of the Treasury on actions (including actions related to forensic accounting and audits) agencies should take to more effectively tailor their methodologies for identifying and measuring improper payments to those programs, or components of programs, where improper payments are most likely to occur. Recommendations shall address the manner in which the recommended actions would affect program access and participation by eligible beneficiaries.

(e) Within 180 days of the date of this order, the Secretary of the Treasury and the Director of OMB in consultation with the CIGIE, the Department of Justice, and program experts, shall recommend to the President actions designed to reduce improper payments by improving information sharing among agencies and programs, and where applicable, State and local governments and other stakeholders. The recommendations shall address the ways in which information sharing may improve eligibility verification and prepayment scrutiny, shall identify legal or regulatory impediments to effective information sharing, and shall address the manner in which the recommended actions would affect program access and participation by eligible beneficiaries.

(f) Within 180 days of the date of this order, and at least once every quarter thereafter, the head of each agency shall submit to the agency's Inspector General and the CIGIE, and make available to the public, a report on any high-dollar improper payments identified by the agency, subject to Federal privacy policies and to the extent permitted by law. The report shall describe any actions the agency has taken or plans to take to recover improper payments, as well as any actions the agency intends to take to prevent improper payments from occurring in the future. The report shall not include any referrals the agency made or anticipates making to the Department of Justice, or any information provided in connection with such referrals. Following the review of each report, the agency Inspector General and the CIGIE shall assess the level of risk associated with the applicable program, determine the extent of oversight warranted, and provide the agency head with recommendations, if any, for modifying the agency's plans.

Sec. 4. *Enhanced Focus on Contractors and Working with State and Local Stakeholders.*

(a) Within 180 days of the date of this order, the Federal Acquisition Regulatory Council, in coordination with the Director of OMB, and in consultation with the National Procurement Fraud Task Force (or its successor group), the CIGIE, and appropriate agency officials, shall recommend to the President actions designed to enhance contractor accountability for improper payments. The recommendations may include, but are not limited to, subjecting contractors to debarment, suspension, financial penalties, and identification through a public Internet website, subject to Federal privacy policies and to the extent permitted by law and where the identification would not interfere with or compromise an ongoing criminal or civil investigation, for knowingly failing timely to disclose credible evidence of significant overpayments received on Government contracts.

(b) Within 30 days of the date of this order, the Director of OMB shall establish a working group consisting of Federal and elected State and local officials to make recommendations to the Director of OMB designed to improve the effectiveness of single audits of State and local governments and non-profit organizations that are expending Federal funds. The Director of OMB may designate an appropriate official to serve as Chair of the working group to convene its meetings and direct its work. The working group's recommendations shall be prepared in consultation with the CIGIE and submitted within 180 days of the date of this order. The recommendations shall address, among other things, the effectiveness of single audits in identifying improper payments and opportunities to streamline or eliminate single audit requirements where their value is minimal.

(c) Within 30 days of the date of this order, the Director of OMB shall establish a working group (which may be separate from the group established under subsection (b) of this section) consisting of Federal and elected State and local officials to make recommendations to the Director of OMB for administrative actions designed to improve the incentives and accountability of State and local governments, as well as other entities receiving Federal funds, for reducing improper payments. The Director of OMB may designate an appropriate official to serve as Chair of the working group to convene its meetings and direct its work. The working group's recommendations shall be prepared in consultation with the CIGIE and submitted within 180 days of the date of this order.

Sec. 5. *Policy Proposals.* The Director of OMB, in consultation with the appropriate agencies and the CIGIE, shall develop policy recommendations, including potential legislative proposals, designed to reduce improper payments, including those caused by error, waste, fraud, and abuse, across Federal programs without compromising program access, to be included, as appropriate, in the Budget of the United States Government for Fiscal Year 2011 and future years, or other Administration proposals.

Sec. 6. *General Provisions.*

- (a) Nothing in this order shall be construed to impair or otherwise affect:
- (i) authority granted by law to a department, agency, the head thereof, or any agency Inspector General; or
 - (ii) functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.
- (b) Nothing in this order shall be construed to require the disclosure of classified information, law enforcement sensitive information, or other information that must be protected in the interests of national security.
- (c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a vertical line through it, and a horizontal line extending to the right.

THE WHITE HOUSE,
November 20, 2009.

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