



CRS Report for Congress

Improper Payments Information Act of 2002: A Brief Introduction

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Summary

The intent of the Improper Payments Information Act (IPIA) is to improve accountability in administering federal tax dollars and to reduce wasteful spending. IPIA provisions require federal agencies to identify programs that are susceptible to significant improper payments, to estimate the amount of overpayments, and to report annually to Congress on those figures and on the steps being taken to reduce such payments. Oversight hearings on the IPIA have been held in both the House and the Senate, and some Members have expressed concern that implementation guidance issued by the Office of Management and Budget (OMB) inappropriately limits the scope of the legislation. This report will be updated as events warrant.

Legislative History and Intent

On November 26, 2002, the Improper Payments Information Act (IPIA) was signed into law as P.L. 107-300 (116 Stat. 2350). Augmenting previous financial management reform laws, the IPIA is intended to increase financial accountability in the federal government, and thereby reduce wasteful spending. The law requires agencies each year to identify programs and activities that may be vulnerable to significant improper payments, to estimate the amount of overpayments or underpayments, and to report on the steps they are taking to reduce such payments. As explained more fully below, improper payments generally include any payments by the federal government that should not have been made or were made in an incorrect amount.

Previously, there was no government-wide requirement for agencies to estimate or report in any systematic way on improper payments, although it is generally acknowledged that billions of dollars are involved. The Office of Management and

Budget (OMB) estimated that in FY2005, improper payments under 47 federal programs totaled approximately \$37.3 billion, an estimate the Government Accountability Office (GAO, formerly the General Accounting Office) has suggested is too conservative.¹

The IPIA was introduced in the 107th Congress as H.R. 4878 on June 6, 2002, by Representative Stephen Horn, with a group of bipartisan cosponsors, and referred to the House Committee on Government Reform. The Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations held markup on the measure on June 18, 2002, and approved the bill, as amended, by unanimous voice vote. On July 9, 2002, H.R. 4878 was considered under suspension of the rules and passed the House, as amended, by voice vote. On October 9, 2002, the Senate Committee on Governmental Affairs ordered H.R. 4878 to be reported favorably, with a substitute amendment. On October 17, 2002, the bill, as amended, passed the Senate by unanimous consent, and on November 12, under suspension of the rules, the House agreed to the Senate amendment by voice vote. The President signed H.R. 4868 into law on November 26, 2002 (P.L. 107-300).

The problem of improper payments had received attention in previous Congresses. During House floor debate on H.R. 4878, Representative Horn noted that hearings held in the past “clearly demonstrated the need” for such legislation:

Since the 104th Congress, the subcommittees I have chaired have held approximately 100 hearings on wasteful spending within the Federal Government. Time and again witnesses from the General Accounting Office and agency inspectors general have told the subcommittee that poor accounting systems and procedures have contributed to the government’s serious and long-term problems involving improper payments.²

In the written report of the Senate Committee on Governmental Affairs to accompany H.R. 4878, the provisions of the bill were explicitly linked to GAO recommendations offered in a best practices guide for agencies in managing improper payments, prepared at the request of the committee chairman, Senator Joseph Lieberman. The guide suggested that determining the nature and extent of risks for improper payments was a crucial step; H.R. 4878 would begin the process of improving the management of improper payments, following GAO’s guidance, “by requiring that agencies annually estimate the amount of improper payments, and report on the steps they are taking to reduce the amounts of those payments in the largest programs.”³

¹ U.S. Congress, Senate Subcommittee on Federal Financial Management, Government Information, and International Security, *An Assessment of Improper Payment Information Act of 2002*, hearings, 109th Cong., 2nd sess., Dec. 5, 2006, at [http://hsgac.senate.gov/_files/ClayJohnsonTestimony05Dec2006ImproperPayments.pdf].

² Rep. Stephen Horn, remarks in the House, *Congressional Record*, daily edition, vol. 148, July 9, 2002, H4379.

³ See GAO Report GAO-02-69G, *Strategies to Manage Improper Payments*, Oct. 2001. Cited in U.S. Congress, Senate Committee on Governmental Affairs, *Improper Payments Information Act of 2002*, report to accompany H.R. 4878, 107th Cong., 2nd sess., S.Rept. 107-333 (Washington: GPO, 2002), p. 2.

Major Provisions

The IPIA directs each executive branch agency, in accordance with OMB guidance, to review all its programs and activities each year, identify those that may be susceptible to significant improper payments, and estimate the amount of improper payments. Agencies are then to report annually to Congress on improper payments, using a standardized methodology determined by OMB.⁴

With respect to any program or activity with estimated annual improper payments exceeding \$10 million, each agency is also required to provide a report on agency actions to reduce such improper payments, including (1) the causes of the improper payments and the results of the actions taken to address them; (2) whether the agency has information systems and other necessary infrastructure to reduce such payments to “minimal cost-effective levels”; (3) if not, budgetary resources requested to accomplish needed changes in information systems and infrastructure; and (4) steps the agency has taken to ensure that managers are held accountable for reducing improper payments.

Improper payment is defined as any payment that should not have been made or that was made in an incorrect amount. This includes duplicate payments, payments to ineligible recipients or for ineligible services, or for services not received or that do not reflect applicable discounts. The act covers payments made by a federal agency, a federal contractor, or a governmental or other organization administering a federal program or activity.

Discussion

The IPIA codified and expanded efforts already underway in the executive branch to reduce improper payments. In 2001, the Bush Administration designated improving financial performance as one of five government-wide initiatives in the President’s Management Agenda (PMA). The establishment of a baseline on the extent of erroneous (improper) payments in major federal benefit programs was a key component of the financial management initiative.⁵ Agencies were to include available information on erroneous payment rates for benefit and assistance programs over \$2 billion as a part of their FY2003 budget submissions. In July 2001, revisions to OMB Circular A-11 in Section 57 implemented this objective, requiring 15 federal agencies to include improper payment information with their initial FY2003 budget materials to OMB. Enactment of the IPIA extended improper payment reporting requirements to all executive branch departments and agencies, lowered the threshold from \$2 billion to \$10 million, and designated Congress (as well as OMB) to receive the annual agency reports.

⁴ The IPIA originally set a deadline of March 31 for agencies to report to Congress on their improper payments in the prior fiscal year. The improper payments reports are now included in the performance and accountability reports or PARs, due to the President (via OMB) and Congress 45 days after the close of an agency’s fiscal year, generally November 15. See OMB Circular A-136, “Form and Content of the Performance and Accountability Report (PAR),” at [<http://www.whitehouse.gov/OMB/bulletins/b01-09.pdf>].

⁵ See U.S. Office of Management and Budget, *The President’s Management Agenda — FY2002* (Washington: OMB, 2001), pp. 19-21. For an overview of the PMA, see CRS Report RS21416, *The President’s Management Agenda: A Brief Introduction*, by Virginia A. McMurtry.

In May 2003, OMB distributed a guide to instruct agencies on the implementation of the IPIA.⁶ The guide provided detailed definitions of “improper” or “erroneous” payments and of “program” and “activity,” and then outlined four steps to be taken by the agencies. First, agencies were required to review systematically all their programs and activities and identify those which are susceptible to significant erroneous payments, defined as “annual erroneous payments in the program exceeding both 2.5% of the program payments and \$10 million.” Second, agencies were to determine an annual estimated amount of erroneous payments made in those programs and activities found susceptible to significant errors; this calculation was to be based on a statistical random sample sufficiently large “to yield an estimate with a 90 percent confidence interval” within 5% precision. The third step was to determine why the particular programs were at risk, and then put in place a plan to reduce the erroneous payments. The last step was agency reporting to the President (via OMB) and Congress on the estimates of the annual amount of erroneous payments in its programs and activities and on progress in reducing them.

There has been criticism of OMB’s guidance to the agencies for implementing the IPIA, particularly regarding the definition of “*significant* [emphasis added] improper payments.” In addition to the \$10 million threshold in estimated improper spending established by the statute, OMB required that the payment represent at least 2.5% of total program payments. The Chairman and Ranking Minority Member of the House Subcommittee on Government Efficiency and Financial Management, Representative Todd Platts and Representative Marsha Blackburn, sent a letter to OMB in August 2003 questioning the 2.5% minimum threshold. Likewise, according to a news article, Senators Charles Grassley and Max Baucus, the Chairman and Ranking Minority Member of the Senate Finance Committee, stated in a January 9, 2004, letter to OMB Director Joshua Bolten that OMB should not have established the 2.5% threshold and should have simply required that agencies report all programs generating estimated improper payments of more than \$10 million. The Senators reportedly observed that by adding the 2.5% threshold, “The improper payments figures that will eventually be reported to the public will look better and feel better than they really are....”⁷

GAO has also argued that the 2.5% threshold could mask the extent of the improper payments problem. In a recent report, GAO identified many examples of agency programs with estimated improper payments over \$10 million that were not included in the agency’s improper payments estimate because they did not meet the 2.5% threshold.⁸ For example, GAO said that the Department of Education did not report on three programs that each had estimated improper payments exceeding \$10 million — \$155 million in total — because in each case those payments represented less than 2.5% of program outlays (p. 44). If the 2.5% criterion were applied to large programs, GAO concluded, billions of dollars in improper payments could go unreported (p. 54). OMB

⁶ OMB, “Improper Payments Information Act of 2002 (Public Law 107-300),” Memorandum for Heads of Executive Departments and Agencies from Mitchell E. Daniels, May 21, 2003, M-03-13. IPIA guidance was subsequently incorporated into Appendix C of OMB Circular A-123.

⁷ Cited by Amelia Gruber, “OMB Defends Actions on Improper Payments,” *GovExec.com*, Jan. 14, 2004.

⁸ GAO Report GAO-07-92, *Improper Payments: Agencies’ Fiscal Year 2005 Reporting Under the Improper Payments Information Act Remains Incomplete*, Dec. 2006, pp. 41-45.

has defended the 2.5% threshold, stating it was established “to ensure that agencies were focusing their resources on programs with the highest levels of risk for improper payments.”⁹

As noted above, OMB requires estimates of improper payments to be provided by agencies in their annual PARs. Not all high-risk programs and activities, however, had estimates in place by the time agencies submitted their FY2005 PARs. Agencies conducted a risk assessment of all federal spending (\$2.5 trillion) in FY2005, and concluded that 60% of government outlays (\$1.5 trillion) were at risk for significant levels of improper payments.¹⁰ Agencies reported error rates for 47 programs in their FY2005 PARs, encompassing \$1.3 trillion, or 85%, of the outlays identified as high-risk.¹¹ A number of major programs, including Medicaid, National School Lunch/Breakfast, and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), were among those lacking estimates. OMB Controller Linda Combs, in testimony before the House Subcommittee on Government Management, Finance, and Accountability on April 5, 2006, said the difficulty in developing error rates in these cases lay in the “size and complexity” of the programs, many of which are administered by state governments.¹² Combs also said that OMB is working with states to collect the information necessary to produce valid estimates for these programs in the next two years.

In 2004, the Bush Administration designated “Eliminating Improper Payments” as a separate program initiative under the PMA.¹³ Fifteen agencies have been graded at the end of each quarter by OMB on their efforts to identify, eliminate, and recover improper payments. The most recent scorecard showed that four agencies were “green” in status, indicating full compliance with OMB’s improper payments standards; eight agencies were “yellow,” meaning they were actively “putting the tools in place” to achieve green; and three agencies were “red,” reflecting noncompliance in one or more areas.¹⁴ In the initial ratings for improper payments at the end of 2004, no agencies received “green,” five were “yellow,” and 10 were “red.”¹⁵ Thus in less than two years, four agencies achieved green, and the number of agencies receiving red declined from 10 to three.

⁹ Letter from Linda Combs, OMB Controller, to McCoy Williams, GAO Director of Financial Management and Assurance, Oct. 26, 2006.

¹⁰ OMB, *Improving the Accuracy and Integrity of Federal Payments*, Feb. 2, 2006, at [http://www.whitehouse.gov/omb/financial/fia/improv_accuracy_fed_payments.pdf].

¹¹ *Ibid.*

¹² Testimony of OMB Controller Linda Combs, U.S. Congress, House Subcommittee on Government Management, Finance, and Accountability, hearings, *The Improper Payments Information Act — Are Agencies Meeting the Requirements of the Law?* 109th Cong., 2nd sess., Apr. 5, 2006.

¹³ See discussion in *Fiscal Year 2006 Budget of the U.S. Government* (Washington: GPO, 2005), p. 54.

¹⁴ The White House, *Scorecard - September 30, 2006*, at [<http://www.whitehouse.gov/results/agenda/scorecard.html>].

¹⁵ *Ibid.*, *Scorecard - December 31, 2004*.

Data from the first two years of IPIA implementation show that in both FY2004 and FY2005, the same seven programs accounted for approximately 95% of all reported erroneous payments.¹⁶ The data also reflect a decline in the government-wide improper payments rate from 3.9% in FY2004 to 3.1% in FY2005, although there is disagreement as to why this occurred. OMB has stated that the decrease was the result of corrective actions taken by agencies, while GAO attributed it primarily to a change in the way HHS estimated improper payments under Medicare.¹⁷ An upward trend in the scope of IPIA coverage is evident as well. In FY2004, agencies had established improper payment rates for programs that accounted for approximately 80% of risk-susceptible dollars, and in FY2005, as agencies developed error rates for 17 additional programs, that figure increased to 85%. Further analysis of these trends will be possible following the release of OMB's report on government-wide improper payment activities during FY2006.

Meanwhile, several oversight hearings on implementation of the IPIA have been held. The House Subcommittee on Government Efficiency and Financial Management held oversight hearings on improper payments in May and July 2003, as did the House Subcommittee on Government Management, Finance, and Accountability in July 2005 and April 2006.¹⁸ In the Senate, the Subcommittee on Federal Financial Management, Government Information, and International Security held improper payments hearings in July 2005, and in March and December 2006.¹⁹ Congressional interest in reducing the number and amount of improper payments seems likely to continue.

¹⁶ OMB, *Improving the Accuracy and Integrity of Federal Payments*, Jan. 25, 2005, at [http://www.whitehouse.gov/omb/financial/fia/ipia_gov-wide_report.pdf]; and *Improving the Accuracy and Integrity of Federal Payments*, Feb. 2, 2006. The seven programs identified in the reports are Medicare; Earned Income Tax Credit; Old Age, Survivors and Disability Insurance; Unemployment Insurance; Supplemental Security Income; combined Public Housing/Rental Assistance/Section 8 programs; and Food Stamps.

¹⁷ OMB, *Improving the Accuracy and Integrity of Federal Payments*, Feb. 2, 2006, p. i; and Testimony of David Walker, GAO Comptroller General, *An Assessment of the Improper Payments Information Act of 2002*, Dec. 5, 2006, p. 4.

¹⁸ U.S. Congress, House Committee on Government Reform, Subcommittee on Government Efficiency and Financial Management, *Show Me the Tax Dollars — How Much Is Lost to Improper Payments Each Year?* hearing, 108th Cong., 1st sess., May 13, 2003, (Washington: GPO, 2003); and *Show Me the Tax Dollars Part II — Improper Payments and the TennCare Program*, July 14, 2003, (Washington: GPO, 2003). Subcommittee on Government Management, Finance, and Accountability, *Implementing the Improper Payment Information Act - Are We Making Progress?* 109th Cong., 1st sess., July 20, 2005, at [<http://reform.house.gov/GMFA/Hearings/EventSingle.aspx?EventID=30182>]; and *The Improper Payments Information Act — Are Agencies Meeting the Requirements of the Law?* Apr. 5, 2006.

¹⁹ U.S. Congress, Senate Subcommittee on Federal Financial Management, Government Information, and International Security, *Improper Payments: Where Are Truth and Transparency in Federal Financial Reporting?* hearing, 109th Cong., 1st sess., July 12, 2005, (Washington: GPO, 2005); and *Reporting Improper Payments: A Report Card on Agencies' Progress*, hearing, Mar. 9, 2006, at [<http://hsgac.senate.gov/index.cfm?Fuseaction=Hearings.Detail&HearingID=329>]; and *An Assessment of the Improper Payments Information Act of 2002*, hearing, Dec. 5, 2006.