

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 949.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3304	31:522.	R.S. §3640.

In the section, before clause (1), the words “except as provided in section 523 of this title” are omitted as superseded by title 39. The words “of the United States, to the credit of the Treasurer” are omitted as unnecessary. In clause (2), the words “if the Secretary believes the safety of the public money and convenience require it” are substituted for “as the safety of the public moneys and the convenience of the public service shall seem to him to require” for clarity and to eliminate unnecessary words.

§ 3305. Audits of depositaries

The Secretary of the Treasury, or an officer, employee, or agent designated by the Secretary, may audit a depositary of public money. For uniformity and accuracy in accounts and safety of public money, an individual conducting an audit shall audit a depositary’s—

- (1) books;
- (2) accounts;
- (3) returns; and
- (4) public money on hand and the way the money is kept.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 949.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3305	31:548.	R.S. §3649.

In the section, before clause (1), the words “or an officer, employee, or agent designated by the Secretary” are substituted for “and for that purpose to appoint special agents, as occasion may require” for clarity and consistency. The words “may audit a depositary of public money” are substituted for “is authorized to cause examinations to be made of the books, accounts and money on hand, of the several depositaries” to eliminate unnecessary words and for consistency. The words “with such compensation, not exceeding \$6 per day and traveling expenses, as he may think reasonable, to be fixed and declared at the time of each appointment” are omitted as superseded by 5:3109 and ch. 57. The words “be instructed to” and “as well” are omitted as surplus.

SUBCHAPTER II—PAYMENTS

§ 3321. Disbursing authority in the executive branch

(a) Except as provided in this section or another law, only officers and employees of the Department of the Treasury designated by the Secretary of the Treasury as disbursing officials may disburse public money available for expenditure by an executive agency.

(b) For economy and efficiency, the Secretary may delegate the authority to disburse public money to officers and employees of other executive agencies.

(c) The head of each of the following executive agencies shall designate personnel of the agency as disbursing officials to disburse public money available for expenditure by the agency:

- (1) United States Marshal’s Office.
- (2) The Department of Defense.

(3) The Department of Homeland Security,¹ (with respect to public money available for expenditure by the Coast Guard when it is not operating as a service in the Navy).

(d) On request of the Secretary and with the approval of the head of an executive agency referred to in subsection (c) of this section, facilities of the agency may be used to assist in disbursing public money available for expenditure by another executive agency.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 949; Pub. L. 103-355, title III, §3067, Oct. 13, 1994, 108 Stat. 3337; Pub. L. 104-106, div. A, title IX, §913(a)(1), Feb. 10, 1996, 110 Stat. 410; Pub. L. 104-201, div. A, title X, §1009(a)(1), Sept. 23, 1996, 110 Stat. 2633; Pub. L. 109-241, title IX, §902(b)(1), July 11, 2006, 120 Stat. 566.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3321(a), (b), 3321(c), (d).	5:901(note). 31:492-1. 5 App.	Exec. Order No. 6166, June 10, 1933, §4. R.S. §176; Sept. 6, 1966, Pub. L. 89-554, §8(a), 80 Stat. 632; June 6, 1972, Pub. L. 92-310, §231(a), 86 Stat. 209. Reorg. Plan No. 4 of 1940, eff. June 30, 1940, §§3, 4, 54 Stat. 1234. Exec. Order No. 6728, May 29, 1934.

The section uses the defined term “executive agency” in section 102 of the revised title because the source provisions of this section are from a reorganization plan and executive orders that apply only to departments, agencies, and instrumentalities of the executive branch of the United States Government.

In subsections (a) and (b), the words “Secretary of the Treasury” and “Secretary” are substituted for references to the Division of Disbursement and a Chief Disbursing Officer because of the source provisions restated in section 321(c) of the revised title. The words “public money” are substituted for “moneys of the United States” for consistency with the other source provisions restated in the section and for consistency in the chapter.

Subsection (a) is substituted for section 4(1st paragraph) of Executive Order No. 6166 to omit executed words.

In subsection (b), the words “may require” and “as the interests of” are omitted as unnecessary. The words “to establish local offices” are omitted because of the authority of the Secretary of the Treasury as the head of the Department of the Treasury and the authority of the Secretary under section 321 of the revised title. The text of section 4(last paragraph) is omitted as superseded by section 3325 of the revised title.

In subsection (c), the text of 31:492-1(1st sentence) is applied only to the listed agencies because of subsection (a) and Executive Order 6728. The text of 31:492-1(last sentence) is omitted as superseded by section 2 of Reorganization Plan No. 18 of 1950 (eff. July 1, 1950, 64 Stat. 1270) and by 40:490. In clause (1), the words after “disbursement by United States marshals” and before the last proviso in section 3 of Reorganization Plan No. 4 of 1940 (eff. June 30, 1940, 54 Stat. 1234) are omitted as unnecessary because of 28:571 and sections 3512(a)-(c) and 3513(a) of the revised title. In clause (2), the word “pay” is substituted for “salaries” in Executive Order No. 6728 for consistency in the revised title and with other titles of the United States Code. The words “including the Marine Corps” are omitted as being included in “military departments”. The words “Panama Canal” are omitted because of the Panama

¹ So in original. The period probably should not appear.

Canal Treaty of 1977. The first proviso is omitted as unnecessary because of sections 3512 and 3513 of the revised title. Section 4 of Reorganization Plan No. 4 of 1940 is omitted because (1) the Post Office Department was abolished by the 1970 restatement of title 39, with all authority of the former Postmaster General being placed in the new United States Postal Service, (2) under 39:410 and 3604, the Postal Service and the Postal Rate Commission were exempt from all provisions of law related to budget and funds, and (3) the Postal Savings System and its Board of Trustees were abolished under section 5 of the Act of March 28, 1942 (ch. 205, 56 Stat. 189).

AMENDMENTS

2006—Subsec. (c)(3). Pub. L. 109-241 substituted “Department of Homeland Security.” for “Department of Transportation”.

1996—Subsec. (c)(2). Pub. L. 104-106 added par. (2) and struck out former par. (2) which read as follows: “The Department of Defense (except for disbursements for departmental pay and expenses in the District of Columbia).”

Subsec. (c)(3). Pub. L. 104-201 added par. (3).

1994—Subsec. (c)(2). Pub. L. 103-355 substituted “The Department of Defense” for “military departments of the Department of Defense”.

IMPROPER PAYMENTS ELIMINATION AND RECOVERY IMPROVEMENT

Pub. L. 112-248, Jan. 10, 2013, 126 Stat. 2390, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Improper Payments Elimination and Recovery Improvement Act of 2012’.

“SEC. 2. DEFINITIONS.

“In this Act—

“(1) the term ‘agency’ means an executive agency as that term is defined under section 102 of title 31, United States Code;

“(2) the term ‘improper payment’ has the meaning given that term in section 2(g) of the Improper Payments Information Act of 2002 [Pub. L. 107-300] (31 U.S.C. 3321 note), as redesignated by section 3(a)(1) of this Act; and

“(3) the term ‘State’ means each State of the United States, the District of Columbia, each territory or possession of the United States, and each federally recognized Indian tribe.

“SEC. 3. IMPROVING THE DETERMINATION OF IMPROPER PAYMENTS BY FEDERAL AGENCIES.

“(a) IN GENERAL.—[Amended Pub. L. 107-300, set out below.]

“(b) IMPROVED ESTIMATES.—

“(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Jan. 10, 2013], the Director of the Office of Management and Budget shall provide guidance to agencies for improving the estimates of improper payments under the Improper Payments Information Act of 2002 [Pub. L. 107-300] (31 U.S.C. 3321 note).

“(2) GUIDANCE.—Guidance under this subsection shall—

“(A) strengthen the estimation process of agencies by setting standards for agencies to follow in determining the underlying validity of sampled payments to ensure amounts being billed, paid, or obligated for payment are proper;

“(B) instruct agencies to give the persons or entities performing improper payments estimates access to all necessary payment data, including access to relevant documentation;

“(C) explicitly bar agencies from relying on self-reporting by the recipients of agency payments as the sole source basis for improper payments estimates;

“(D) require agencies to include all identified improper payments in the reported estimate, regard-

less of whether the improper payment in question has been or is being recovered;

“(E) include payments to employees, including salary, locality pay, travel pay, purchase card use, and other employee payments, as subject to risk assessment and, where appropriate, improper payment estimation; and

“(F) require agencies to tailor their corrective actions for the high-priority programs identified under section 2(b)(1)(A) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) to better reflect the unique processes, procedures, and risks involved in each specific program.

“(c) TECHNICAL AND CONFORMING AMENDMENTS.—[Amended sections 2(h), 3 of Pub. L. 111-204, set out below.]

“SEC. 4. IMPROPER PAYMENTS INFORMATION.

[Amended Pub. L. 107-300, set out below.]

“SEC. 5. DO NOT PAY INITIATIVE.

“(a) PREPAYMENT AND PREAWARD PROCEDURES.—

“(1) IN GENERAL.—Each agency shall review prepayment and preaward procedures and ensure that a thorough review of available databases with relevant information on eligibility occurs to determine program or award eligibility and prevent improper payments before the release of any Federal funds.

“(2) DATABASES.—At a minimum and before issuing any payment and award, each agency shall review as appropriate the following databases to verify eligibility of the payment and award:

“(A) The Death Master File of the Social Security Administration.

“(B) The General Services Administration’s Excluded Parties List System.

“(C) The Debt Check Database of the Department of the Treasury.

“(D) The Credit Alert System or Credit Alert Interactive Voice Response System of the Department of Housing and Urban Development.

“(E) The List of Excluded Individuals/Entities of the Office of Inspector General of the Department of Health and Human Services.

“(b) DO NOT PAY INITIATIVE.—

“(1) ESTABLISHMENT.—There is established the Do Not Pay Initiative which shall include—

“(A) use of the databases described under subsection (a)(2); and

“(B) use of other databases designated by the Director of the Office of Management and Budget in consultation with agencies and in accordance with paragraph (2).

“(2) OTHER DATABASES.—In making designations of other databases under paragraph (1)(B), the Director of the Office of Management and Budget shall—

“(A) consider any database that substantially assists in preventing improper payments; and

“(B) provide public notice and an opportunity for comment before designating a database under paragraph (1)(B).

“(3) ACCESS AND REVIEW BY AGENCIES.—For purposes of identifying and preventing improper payments, each agency shall have access to, and use of, the Do Not Pay Initiative to verify payment or award eligibility in accordance with subsection (a) when the Director of the Office of Management and Budget determines the Do Not Pay Initiative is appropriately established for the agency.

“(4) PAYMENT OTHERWISE REQUIRED.—When using the Do Not Pay Initiative, an agency shall recognize that there may be circumstances under which the law requires a payment or award to be made to a recipient, regardless of whether that recipient is identified as potentially ineligible under the Do Not Pay Initiative.

“(5) ANNUAL REPORT.—The Director of the Office of Management and Budget shall submit to Congress an annual report, which may be included as part of another report submitted to Congress by the Director, regarding the operation of the Do Not Pay Initiative, which shall—

“(A) include an evaluation of whether the Do Not Pay Initiative has reduced improper payments or improper awards; and

“(B) provide the frequency of corrections or identification of incorrect information.

“(c) DATABASE INTEGRATION PLAN.—Not later than 60 days after the date of enactment of this Act [Jan. 10, 2013], the Director of the Office of Management and Budget shall provide to the Congress a plan for—

“(1) inclusion of other databases on the Do Not Pay Initiative;

“(2) to the extent permitted by law, agency access to the Do Not Pay Initiative; and

“(3) the data use agreements described under subsection (e)(2)(D).

“(d) INITIAL WORKING SYSTEM.—

“(1) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall establish a working system for prepayment and preaward review that includes the Do Not Pay Initiative as described under this section.

“(2) WORKING SYSTEM.—The working system established under paragraph (1)—

“(A) may be located within an appropriate agency;

“(B) shall include not less than 3 agencies as users of the system; and

“(C) shall include investigation activities for fraud and systemic improper payments detection through analytic technologies and other techniques, which may include commercial database use or access.

“(3) APPLICATION TO ALL AGENCIES.—Not later than June 1, 2013, each agency shall review all payments and awards for all programs of that agency through the system established under this subsection.

“(e) FACILITATING DATA ACCESS BY FEDERAL AGENCIES AND OFFICES OF INSPECTORS GENERAL FOR PURPOSES OF PROGRAM INTEGRITY.—

“(1) DEFINITION.—In this subsection, the term ‘Inspector General’ means any Inspector General described in subparagraph (A), (B), or (I) of section 11(b)(1) of the Inspector General Act of 1978 (5 U.S.C. App.) and any successor Inspector General.

“(2) COMPUTER MATCHING BY FEDERAL AGENCIES FOR PURPOSES OF INVESTIGATION AND PREVENTION OF IMPROPER PAYMENTS AND FRAUD.—

“(A) IN GENERAL.—Except as provided in this paragraph, in accordance with section 552a of title 5, United States Code (commonly known as the Privacy Act of 1974), each Inspector General and the head of each agency may enter into computer matching agreements with other inspectors general and agency heads that allow ongoing data matching (which shall include automated data matching) in order to assist in the detection and prevention of improper payments.

“(B) REVIEW.—Not later than 60 days after a proposal for an agreement under subparagraph (A) has been presented to a Data Integrity Board established under section 552a(u) of title 5, United States Code, for consideration, the Data Integrity Board shall respond to the proposal.

“(C) TERMINATION DATE.—An agreement under subparagraph (A)—

“(i) shall have a termination date of less than 3 years; and

“(ii) during the 3-month period ending on the date on which the agreement is scheduled to terminate, may be renewed by the agencies entering the agreement for not more than 3 years.

“(D) MULTIPLE AGENCIES.—For purposes of this paragraph, section 552a(o)(1) of title 5, United States Code, shall be applied by substituting ‘between the source agency and the recipient agency or non-Federal agency or an agreement governing multiple agencies’ for ‘between the source agency and the recipient agency or non-Federal agency’ in the matter preceding subparagraph (A).

“(E) COST-BENEFIT ANALYSIS.—A justification under section 552a(o)(1)(B) of title 5, United States Code, relating to an agreement under subparagraph (A) is not required to contain a specific estimate of any savings under the computer matching agreement.

“(3) GUIDANCE BY THE OFFICE OF MANAGEMENT AND BUDGET.—Not later than 6 months after the date of enactment of this Act, and in consultation with the Council of the Inspectors General on Integrity and Efficiency, the Secretary of Health and Human Services, the Commissioner of Social Security, and the head of any other relevant agency, the Director of the Office of Management and Budget shall—

“(A) issue guidance for agencies regarding implementing this subsection, which shall include standards for—

“(i) reimbursement of costs, when necessary, between agencies;

“(ii) retention and timely destruction of records in accordance with section 552a(o)(1)(F) of title 5, United States Code; and

“(iii) prohibiting duplication and redisclosure of records in accordance with section 552a(o)(1)(H) of title 5, United States Code;

“(B) review the procedures of the Data Integrity Boards established under section 552a(u) of title 5, United States Code, and develop new guidance for the Data Integrity Boards to—

“(i) improve the effectiveness and responsiveness of the Data Integrity Boards;

“(ii) ensure privacy protections in accordance with section 552a of title 5, United States Code (commonly known as the Privacy Act of 1974); and

“(iii) establish standard matching agreements for use when appropriate; and

“(C) establish and clarify rules regarding what constitutes making an agreement entered under paragraph (2)(A) available upon request to the public for purposes of section 552a(o)(2)(A)(ii) of title 5, United States Code, which shall include requiring publication of the agreement on a public website.

“(4) CORRECTIONS.—The Director of the Office of Management and Budget shall establish procedures providing for the correction of data in order to ensure—

“(A) compliance with section 552a(p) of title 5, United States Code; and

“(B) that corrections are made in any Do Not Pay Initiative database and in any relevant source databases designated by the Director of the Office of Management and Budget under subsection (b)(1).

“(5) COMPLIANCE.—The head of each agency, in consultation with the Inspector General of the agency, shall ensure that any information provided to an individual or entity under this subsection is provided in accordance with protocols established under this subsection.

“(6) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to affect the rights of an individual under section 552a(p) of title 5, United States Code.

“(f) DEVELOPMENT AND ACCESS TO A DATABASE OF INCARCERATED INDIVIDUALS.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall submit to Congress recommendations for increasing the use of, access to, and the technical feasibility of using data on the Federal, State, and local conviction and incarceration status of individuals for purposes of identifying and preventing improper payments by Federal agencies and programs and fraud.

“(g) PLAN TO CURE FEDERAL IMPROPER PAYMENTS TO DECEASED INDIVIDUALS BY IMPROVING THE QUALITY AND USE BY FEDERAL AGENCIES OF THE SOCIAL SECURITY ADMINISTRATION DEATH MASTER FILE.—

“(1) ESTABLISHMENT.—In conjunction with the Commissioner of Social Security and in consultation with relevant stakeholders that have an interest in or responsibility for providing the data, and the States,

the Director of the Office of Management and Budget shall establish a plan for improving the quality, accuracy, and timeliness of death data maintained by the Social Security Administration, including death information reported to the Commissioner under section 205(r) of the Social Security Act (42 U.S.C. 405(r)).

“(2) ADDITIONAL ACTIONS UNDER PLAN.—The plan established under this subsection shall include recommended actions by agencies to—

“(A) increase the quality and frequency of access to the Death Master File and other death data;

“(B) achieve a goal of at least daily access as appropriate;

“(C) provide for all States and other data providers to use improved and electronic means for providing data;

“(D) identify improved methods by agencies for determining ineligible payments due to the death of a recipient through proactive verification means; and

“(E) address improper payments made by agencies to deceased individuals as part of Federal retirement programs.

“(3) REPORT.—Not later than 120 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall submit a report to Congress on the plan established under this subsection, including recommended legislation.

“SEC. 6. IMPROVING RECOVERY OF IMPROPER PAYMENTS.

“(a) DEFINITION.—In this section, the term ‘recovery audit’ means a recovery audit described under section 2(h) of the Improper Payments Elimination and Recovery Act of 2010 [Pub. L. 111-204] (31 U.S.C. 3301 note).

“(b) REVIEW.—The Director of the Office of Management and Budget shall determine—

“(1) current and historical rates and amounts of recovery of improper payments (or, in cases in which improper payments are identified solely on the basis of a sample, recovery rates and amounts estimated on the basis of the applicable sample), including a list of agency recovery audit contract programs and specific information of amounts and payments recovered by recovery audit contractors; and

“(2) targets for recovering improper payments, including specific information on amounts and payments recovered by recovery audit contractors.”

DETERMINATIONS OF AGENCY READINESS FOR OPINION ON INTERNAL CONTROL

Pub. L. 111-204, §2(g), July 22, 2010, 124 Stat. 2228, provided that: “Not later than 1 year after the date of enactment of this Act [July 22, 2010], the Director of the Office of Management and Budget shall develop—

“(1) specific criteria as to when an agency should initially be required to obtain an opinion on internal control over improper payments; and

“(2) criteria for an agency that has demonstrated a stabilized, effective system of internal control over improper payments, whereby the agency would qualify for a multiyear cycle for obtaining an audit opinion on internal control over improper payments, rather than an annual cycle.”

RECOVERY AUDITS

Pub. L. 111-204, §2(h), July 22, 2010, 124 Stat. 2228, as amended by Pub. L. 112-248, §3(c)(1), Jan. 10, 2013, 126 Stat. 2392, provided that:

“(1) DEFINITION.—In this subsection, the term ‘agency’ has the meaning given under section 2(g) of the Improper Payments Information Act of 2002 [Pub. L. 107-300] (31 U.S.C. 3321 note).

“(2) IN GENERAL.—

“(A) CONDUCT OF AUDITS.—Except as provided under paragraph (4) and if not prohibited under any other provision of law, the head of each agency shall conduct recovery audits with respect to each program and activity of the agency that expends \$1,000,000 or

more annually if conducting such audits would be cost-effective.

“(B) PROCEDURES.—In conducting recovery audits under this subsection, the head of an agency—

“(i) shall give priority to the most recent payments and to payments made in any program or programs identified as susceptible to significant improper payments under section 2(a) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note);

“(ii) shall implement this subsection in a manner designed to ensure the greatest financial benefit to the Government; and

“(iii) may conduct recovery audits directly, by using other departments and agencies of the United States, or by procuring performance of recovery audits by private sector sources by contract (subject to the availability of appropriations), or by any combination thereof.

“(C) RECOVERY AUDIT CONTRACTS.—With respect to recovery audits procured by an agency by contract—

“(i) subject to subparagraph (B)(iii), and except to the extent such actions are outside the agency’s authority, as defined by section 605(a) [6(a)] of the Contract Disputes Act of 1978 ([former] 41 U.S.C. 605(a)) [now 41 U.S.C. 7103(a), (c)(1), (d), (e)], the head of the agency may authorize the contractor to notify entities (including persons) of potential overpayments made to such entities, respond to questions concerning potential overpayments, and take other administrative actions with respect to overpayment claims made or to be made by the agency; and

“(ii) such contractor shall have no authority to make final determinations relating to whether any overpayment occurred and whether to compromise, settle, or terminate overpayment claims.

“(D) CONTRACT TERMS AND CONDITIONS.—

“(i) IN GENERAL.—The agency shall include in each contract for procurement of performance of a recovery audit a requirement that the contractor shall—

“(I) provide to the agency periodic reports on conditions giving rise to overpayments identified by the contractor and any recommendations on how to mitigate such conditions;

“(II) notify the agency of any overpayments identified by the contractor pertaining to the agency or to any other agency or agencies that are beyond the scope of the contract; and

“(III) report to the agency credible evidence of fraud or vulnerabilities to fraud, and conduct appropriate training of personnel of the contractor on identification of fraud.

“(ii) REPORTS ON ACTIONS TAKEN.—Not later than November 1 of each year, each agency shall submit a report on actions taken by the agency during the preceding fiscal year to address the recommendations described under clause (i)(I) to—

“(I) the Office of Management and Budget; and

“(II) Congress.

“(E) AGENCY ACTION FOLLOWING NOTIFICATION.—An agency shall take prompt and appropriate action in response to a report or notification by a contractor under subparagraph (D)(i)(I) or (II), to collect overpayments and shall forward to other agencies any information that applies to such agencies.

“(3) DISPOSITION OF AMOUNTS RECOVERED.—

“(A) IN GENERAL.—Amounts collected by agencies each fiscal year through recovery audits conducted under this subsection shall be treated in accordance with this paragraph. The agency head shall determine the distribution of collected amounts, less amounts needed to fulfill the purposes of section 3562(a) of title 31, United States Code, in accordance with subparagraphs (B), (C), and (D).

“(B) USE FOR FINANCIAL MANAGEMENT IMPROVEMENT PROGRAM.—Not more than 25 percent of the amounts collected by an agency through recovery audits—

“(i) shall be available to the head of the agency to carry out the financial management improvement program of the agency under paragraph (4);

“(ii) may be credited, if applicable, for that purpose by the head of an agency to any agency appropriations and funds that are available for obligation at the time of collection; and

“(iii) shall be used to supplement and not supplant any other amounts available for that purpose and shall remain available until expended.

“(C) USE FOR ORIGINAL PURPOSE.—Not more than 25 percent of the amounts collected by an agency—

“(i) shall be credited to the appropriation or fund, if any, available for obligation at the time of collection for the same general purposes as the appropriation or fund from which the overpayment was made;

“(ii) shall remain available for the same period and purposes as the appropriation or fund to which credited; and

“(iii) if the appropriation from which the overpayment was made has expired, shall be newly available for the same time period as the funds were originally available for obligation, except that any amounts that are recovered more than five fiscal years from the last fiscal year in which the funds were available for obligation shall be deposited in the Treasury as miscellaneous receipts, except that in the case of recoveries of overpayments that are made from trust or special fund accounts, such amounts shall revert to those accounts.

“(D) USE FOR INSPECTOR GENERAL ACTIVITIES.—Not more than 5 percent of the amounts collected by an agency shall be available to the Inspector General of that agency—

“(i) for—

“(I) the Inspector General to carry out this Act [see Short Title of 2010 Amendment note set out under section 3301 of this title]; or

“(II) any other activities of the Inspector General relating to investigating improper payments or auditing internal controls associated with payments; and

“(ii) shall remain available for the same period and purposes as the appropriation or fund to which credited.

“(E) REMAINDER.—Amounts collected that are not applied in accordance with subparagraph (A), (B), (C), or (D) shall be deposited in the Treasury as miscellaneous receipts, except that in the case of recoveries of overpayments that are made from trust or special fund accounts, such amounts shall revert to those accounts.

“(F) DISCRETIONARY AMOUNTS.—This paragraph shall apply only to recoveries of overpayments that are made from discretionary appropriations (as that term is defined by paragraph 7 of [subsection (c) of] section 250 of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 900(c)(7)]) and shall not apply to recoveries of overpayments that are made from discretionary amounts that were appropriated prior to enactment of this Act [July 22, 2010].

“(G) APPLICATION.—This paragraph shall not apply to recoveries of overpayments if the appropriation from which the overpayment was made has not expired.

“(4) FINANCIAL MANAGEMENT IMPROVEMENT PROGRAM.—

“(A) REQUIREMENT.—The head of each agency shall conduct a financial management improvement program, consistent with rules prescribed by the Director of the Office of Management and Budget.

“(B) PROGRAM FEATURES.—In conducting the program, the head of the agency—

“(i) shall, as the first priority of the program, address problems that contribute directly to agency improper payments; and

“(ii) may seek to reduce errors and waste in other agency programs and operations.

“(5) PRIVACY PROTECTIONS.—Any nongovernmental entity that, in the course of recovery auditing or recovery activity under this subsection, obtains information

that identifies an individual or with respect to which there is a reasonable basis to believe that the information can be used to identify an individual, may not disclose the information for any purpose other than such recovery auditing or recovery activity and governmental oversight of such activity, unless disclosure for that other purpose is authorized by the individual to the executive agency that contracted for the performance of the recovery auditing or recovery activity.

“(6) OTHER RECOVERY AUDIT REQUIREMENTS.—

“(A) IN GENERAL.—(i) Except as provided in clause (ii), subchapter VI of chapter 35 of title 31, United States Code, is repealed.

“(ii) Section 3562(a) of title 31, United States Code, shall continue in effect, except that references in such section 3562(a) to programs carried out under section 3561 of such title, shall be interpreted to mean programs carried out under section 2(h) of this Act.

“(B) TECHNICAL AND CONFORMING AMENDMENTS.—

“(i) TABLE OF SECTIONS.—[Amended analysis of chapter 35 of this title.]

“(ii) DEFINITION.—[Amended section 3501 of this title.]

“(iii) HOMELAND SECURITY GRANTS.—[Amended section 612 of Title 6, Domestic Security.]

“(7) RULE OF CONSTRUCTION.—Except as provided under paragraph (5), nothing in this section shall be construed as terminating or in any way limiting authorities that are otherwise available to agencies under existing provisions of law to recover improper payments and use recovered amounts.”

COMPLIANCE

Pub. L. 111-204, §3, July 22, 2010, 124 Stat. 2232, as amended by Pub. L. 112-248, §3(c)(2), Jan. 10, 2013, 126 Stat. 2392, provided that:

“(a) DEFINITIONS.—In this section:

“(1) AGENCY.—The term ‘agency’ has the meaning given under section 2(g) of the Improper Payments Information Act of 2002 [Pub. L. 107-300] (31 U.S.C. 3321 note).

“(2) ANNUAL FINANCIAL STATEMENT.—The term ‘annual financial statement’ means the annual financial statement required under section 3515 of title 31, United States Code, or similar provision of law.

“(3) COMPLIANCE.—The term ‘compliance’ means that the agency—

“(A) has published an annual financial statement for the most recent fiscal year and posted that report and any accompanying materials required under guidance of the Office of Management and Budget on the agency website;

“(B) if required, has conducted a program specific risk assessment for each program or activity that conforms with section 2(a) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note); and

“(C) if required, publishes improper payments estimates for all programs and activities identified under section 2(c) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) in the accompanying materials to the annual financial statement;

“(D) publishes programmatic corrective action plans prepared under section 2(d) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) that the agency may have in the accompanying materials to the annual financial statement;

“(E) publishes improper payments reduction targets established under section 2(d) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) that the agency may have in the accompanying materials to the annual financial statement for each program assessed to be at risk, and is meeting such targets; and

“(F) has reported an improper payment rate of less than 10 percent for each program and activity for which an estimate was published under section 2(c) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note).

“(b) ANNUAL COMPLIANCE REPORT BY INSPECTORS GENERAL OF AGENCIES.—Each fiscal year, the Inspector

General of each agency shall determine whether the agency is in compliance and submit a report on that determination to—

- “(1) the head of the agency;
- “(2) the Committee on Homeland Security and Governmental Affairs of the Senate;
- “(3) the Committee on Oversight and Governmental Reform of the House of Representatives; and
- “(4) the Comptroller General.

“(c) REMEDIATION.—

“(1) NONCOMPLIANCE.—

“(A) IN GENERAL.—If an agency is determined by the Inspector General of that agency not to be in compliance under subsection (b) in a fiscal year, the head of the agency shall submit a plan to Congress describing the actions that the agency will take to come into compliance.

“(B) PLAN.—The plan described under subparagraph (A) shall include—

- “(i) measurable milestones to be accomplished in order to achieve compliance for each program or activity;
- “(ii) the designation of a senior agency official who shall be accountable for the progress of the agency in coming into compliance for each program or activity; and
- “(iii) the establishment of an accountability mechanism, such as a performance agreement, with appropriate incentives and consequences tied to the success of the official designated under clause (i) in leading the efforts of the agency to come into compliance for each program and activity.

“(2) NONCOMPLIANCE FOR 2 FISCAL YEARS.—

“(A) IN GENERAL.—If an agency is determined by the Inspector General of that agency not to be in compliance under subsection (b) for 2 consecutive fiscal years for the same program or activity, and the Director of the Office of Management and Budget determines that additional funding would help the agency come into compliance, the head of the agency shall obligate additional funding, in an amount determined by the Director, to intensified compliance efforts.

“(B) FUNDING.—In providing additional funding described under subparagraph (A), the head of an agency shall use any reprogramming or transfer authority available to the agency. If after exercising that reprogramming or transfer authority additional funding is necessary to obligate the full level of funding determined by the Director of the Office of Management and Budget under subparagraph (A), the agency shall submit a request to Congress for additional reprogramming or transfer authority.

“(3) REAUTHORIZATION AND STATUTORY PROPOSALS.—If an agency is determined by the Inspector General of that agency not to be in compliance under subsection (b) for more than 3 consecutive fiscal years for the same program or activity, the head of the agency shall, not later than 30 days after such determination, submit to Congress—

“(A) reauthorization proposals for each program or activity that has not been in compliance for 3 or more consecutive fiscal years; or

“(B) proposed statutory changes necessary to bring the program or activity into compliance.

“(d) COMPLIANCE ENFORCEMENT PILOT PROGRAMS.—

“(1) IN GENERAL.—The Director of the Office of Management and Budget may establish 1 or more pilot programs which shall test potential accountability mechanisms with appropriate incentives and consequences tied to success in ensuring compliance with this Act [see Short Title of 2010 Amendment note set out under section 3301 of this title] and eliminating improper payments.

“(2) REPORT.—Not later than 5 years after the date of enactment of this Act [July 22, 2010], the Director of the Office of Management and Budget shall submit a report to Congress on the findings associated with any pilot programs conducted under paragraph (1).

The report shall include any legislative or other recommendations that the Director determines necessary.

“(e) REPORT ON CHIEF FINANCIAL OFFICERS ACT OF 1990.—Not later than 1 year after the date of the enactment of this Act [July 22, 2010], the Chief Financial Officers Council established under section 302 of the Chief Financial Officers Act of 1990 [Pub. L. 101-576] (31 U.S.C. 901 note) and the Council of Inspectors General on Integrity and Efficiency established under section 7 of the Inspector General Reform Act of 2009 [2008] (Public Law 110-409) [see section 11 of the Inspector General Act of 1978, Pub. L. 95-452, set out in the Appendix to Title 5, Government Organization and Employees], in consultation with a broad cross-section of experts and stakeholders in Government accounting and financial management shall—

“(1) jointly examine the lessons learned during the first 20 years of implementing the Chief Financial Officers Act of 1990 [Pub. L. 101-576] (31 U.S.C. 901) [see Short Title of 1990 Amendment note set out under section 501 of this title] and identify reforms or improvements, if any, to the legislative and regulatory compliance framework for Federal financial management that will optimize Federal agency efforts to—

“(A) publish relevant, timely, and reliable reports on Government finances; and

“(B) implement internal controls that mitigate the risk for fraud, waste, and error in Government programs; and

“(2) jointly submit a report on the results of the examination to—

“(A) the Committee on Homeland Security and Governmental Affairs of the Senate;

“(B) the Committee on Oversight and Government Reform of the House of Representatives; and

“(C) the Comptroller General.”

IMPROPER PAYMENTS

Pub. L. 107-300, Nov. 26, 2002, 116 Stat. 2350, as amended by Pub. L. 111-204, §2(a)-(f), July 22, 2010, 124 Stat. 2224-2228; Pub. L. 112-248, §§3(a), (4), Jan. 10, 2013, 126 Stat. 2390, 2392, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Improper Payments Information Act of 2002’.

“SEC. 2. ESTIMATES OF IMPROPER PAYMENTS AND REPORTS ON ACTIONS TO REDUCE THEM.

“(a) IDENTIFICATION OF SUSCEPTIBLE PROGRAMS AND ACTIVITIES.—

“(1) IN GENERAL.—The head of each agency shall, in accordance with guidance prescribed by the Director of the Office of Management and Budget, periodically review all programs and activities that the relevant agency head administers and identify all programs and activities that may be susceptible to significant improper payments.

“(2) FREQUENCY.—Reviews under paragraph (1) shall be performed for each program and activity that the relevant agency head administers during the year after which the Improper Payments Elimination and Recovery Act of 2010 is enacted [July 22, 2010] and at least once every 3 fiscal years thereafter. For those agencies already performing a risk assessment every 3 years, agencies may apply to the Director of the Office of Management and Budget for a waiver from the requirement of the preceding sentence and continue their 3-year risk assessment cycle.

“(3) RISK ASSESSMENTS.—

“(A) DEFINITION.—In this subsection the term ‘significant’ means—

“(i) except as provided under clause (ii), that improper payments in the program or activity in the preceding fiscal year may have exceeded—

“(I) \$10,000,000 of all program or activity payments made during that fiscal year reported and 2.5 percent of program outlays; or

“(II) \$100,000,000; and

“(ii) with respect to fiscal year 2014 and each fiscal year thereafter, that improper payments in the program or activity in the preceding fiscal year may have exceeded—

“(I) \$10,000,000 of all program or activity payments made during that fiscal year reported and 1.5 percent of program outlays; or

“(II) \$100,000,000.

“(B) SCOPE.—In conducting the reviews under paragraph (1), the head of each agency shall take into account those risk factors that are likely to contribute to a susceptibility to significant improper payments, such as—

“(i) whether the program or activity reviewed is new to the agency;

“(ii) the complexity of the program or activity reviewed;

“(iii) the volume of payments made through the program or activity reviewed;

“(iv) whether payments or payment eligibility decisions are made outside of the agency, such as by a State or local government;

“(v) recent major changes in program funding, authorities, practices, or procedures;

“(vi) the level, experience, and quality of training for personnel responsible for making program eligibility determinations or certifying that payments are accurate; and

“(vii) significant deficiencies in the audit report of the agency or other relevant management findings that might hinder accurate payment certification.

“(b) IMPROVING THE DETERMINATION OF IMPROPER PAYMENTS.—

“(1) IN GENERAL.—The Director of the Office of Management and Budget shall on an annual basis—

“(A) identify a list of high-priority Federal programs for greater levels of oversight and review—

“(i) in which the highest dollar value or highest rate of improper payments occur; or

“(ii) for which there is a higher risk of improper payments; and

“(B) in coordination with the agency responsible for administering the high-priority program, establish annual targets and semi-annual or quarterly actions for reducing improper payments associated with each high-priority program.

“(2) REPORT ON HIGH-PRIORITY IMPROPER PAYMENTS.—

“(A) IN GENERAL.—Subject to Federal privacy policies and to the extent permitted by law, each agency with a program identified under paragraph (1)(A) on an annual basis shall submit to the Inspector General of that agency, and make available to the public (including availability through the Internet), a report on that program.

“(B) CONTENTS.—Each report under this paragraph—

“(i) shall describe—

“(I) any action the agency—

“(aa) has taken or plans to take to recover improper payments; and

“(bb) intends to take to prevent future improper payments; and

“(ii) 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) PUBLIC AVAILABILITY ON CENTRAL WEBSITE.—The Office of Management and Budget shall make each report submitted under this paragraph available on a central website.

“(D) AVAILABILITY OF INFORMATION TO INSPECTOR GENERAL.—Subparagraph (B)(ii) shall not prohibit any referral or information being made available to an Inspector General as otherwise provided by law.

“(E) ASSESSMENT AND RECOMMENDATIONS.—The Inspector General of each agency that submits a report under this paragraph shall, for each program of the agency that is identified under paragraph (1)(A)—

“(i) review—

“(I) the assessment of the level of risk associated with the program, and the quality of the improper payment estimates and methodology of the agency relating to the program; and

“(II) the oversight or financial controls to identify and prevent improper payments under the program; and

“(ii) submit to Congress recommendations, which may be included in another report submitted by the Inspector General to Congress, for modifying any plans of the agency relating to the program, including improvements for improper payments determination and estimation methodology.

“(c) ESTIMATION OF IMPROPER PAYMENTS.—With respect to each program and activity identified under subsection (a), the head of the relevant agency shall—

“(1) produce a statistically valid estimate, or an estimate that is otherwise appropriate using a methodology approved by the Director of the Office of Management and Budget, of the improper payments made by each program and activity; and

“(2) include those estimates in the accompanying materials to the annual financial statement of the agency required under section 3515 of title 31, United States Code, or similar provision of law and applicable guidance of the Office of Management and Budget.

“(d) REPORTS ON ACTIONS TO REDUCE IMPROPER PAYMENTS.—With respect to any program or activity of an agency with estimated improper payments under subsection (c), the head of the agency shall provide with the estimate under subsection (c) a report on what actions the agency is taking to reduce improper payments, including—

“(1) a description of the causes of the improper payments, actions planned or taken to correct those causes, and the planned or actual completion date of the actions taken to address those causes;

“(2) in order to reduce improper payments to a level below which further expenditures to reduce improper payments would cost more than the amount such expenditures would save in prevented or recovered improper payments, a statement of whether the agency has what is needed with respect to—

“(A) internal controls;

“(B) human capital; and

“(C) information systems and other infrastructure;

“(3) if the agency does not have sufficient resources to establish and maintain effective internal controls under paragraph (2)(A), a description of the resources the agency has requested in its budget submission to establish and maintain such internal controls;

“(4) program-specific and activity-specific improper payments reduction targets that have been approved by the Director of the Office of Management and Budget; and

“(5) a description of the steps the agency has taken to ensure that agency managers, programs, and, where appropriate, States and localities are held accountable through annual performance appraisal criteria for—

“(A) meeting applicable improper payments reduction targets; and

“(B) establishing and maintaining sufficient internal controls, including an appropriate control environment, that effectively—

“(i) prevent improper payments from being made; and

“(ii) promptly detect and recover improper payments that are made.

“(e) REPORTS ON ACTIONS TO RECOVER IMPROPER PAYMENTS.—With respect to any improper payments identified in recovery audits conducted under section 2(h) of the Improper Payments Elimination and Recovery Act of 2010 [Pub. L. 111-204] (31 U.S.C. 3321 note), the head of the agency shall provide with the estimate under subsection (c) a report on all actions the agency is taking to recover improper payments, including—

“(1) a discussion of the methods used by the agency to recover overpayments;

“(2) the amounts recovered, outstanding, and determined to not be collectable, including the percent such amounts represent of the total overpayments of the agency;

“(3) if a determination has been made that certain overpayments are not collectable, a justification of that determination;

“(4) an aging schedule of the amounts outstanding;

“(5) a summary of how recovered amounts have been disposed of;

“(6) a discussion of any conditions giving rise to improper payments and how those conditions are being resolved; and

“(7) if the agency has determined under section 2(h) of the Improper Payments Elimination and Recovery Act of 2010 (31 U.S.C. 3321 note) that performing recovery audits for any applicable program or activity is not cost-effective, a justification for that determination.

“(f) GOVERNMENTWIDE REPORTING OF IMPROPER PAYMENTS AND ACTIONS TO RECOVER IMPROPER PAYMENTS.—

“(1) REPORT.—Each fiscal year the Director of the Office of Management and Budget shall submit a report with respect to the preceding fiscal year on actions agencies have taken to report information regarding improper payments and actions to recover improper overpayments to—

“(A) the Committee on Homeland Security and Governmental Affairs of the Senate; and

“(B) the Committee on Oversight and Government Reform of the House of Representatives.

“(2) CONTENTS.—Each report under this subsection shall include—

“(A) a summary of the reports of each agency on improper payments and recovery actions submitted under this section;

“(B) an identification of the compliance status of each agency to which this Act applies;

“(C) governmentwide improper payment reduction targets; and

“(D) a discussion of progress made towards meeting governmentwide improper payment reduction targets.

“(g) DEFINITIONS.—In this section:

“(1) AGENCY.—The term ‘agency’ means an executive agency, as that term is defined in section 102 of title 31, United States Code.

“(2) IMPROPER PAYMENT.—The term ‘improper payment’—

“(A) means 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.

“(3) PAYMENT.—The term ‘payment’ means any transfer or commitment for future transfer of Federal funds such as cash, securities, loans, loan guarantees, and insurance subsidies to any non-Federal person or entity or a Federal employee, that is made by a Federal agency, a Federal contractor, a Federal grantee, or a governmental or other organization administering a Federal program or activity.

“(4) PAYMENT FOR AN INELIGIBLE GOOD OR SERVICE.—The term ‘payment for an ineligible good or service’ shall include a payment for any good or service that is rejected under any provision of any contract, grant, lease, cooperative agreement, or any other funding mechanism.

“(h) GUIDANCE BY THE OFFICE OF MANAGEMENT AND BUDGET.—

“(1) IN GENERAL.—Not later than 6 months after the date of enactment of the Improper Payments Elimination and Recovery Act of 2010 [July 22, 2010], the Director of the Office of Management and Budget shall prescribe guidance for agencies to implement the requirements of this section. The guidance shall not include any exemptions to such requirements not specifically authorized by this section.

“(2) CONTENTS.—The guidance under paragraph (1) shall prescribe—

“(A) the form of the reports on actions to reduce improper payments, recovery actions, and governmentwide reporting; and

“(B) strategies for addressing risks and establishing appropriate prepayment and postpayment internal controls.”

EX. ORD. NO. 13520. REDUCING IMPROPER PAYMENTS

Ex. Ord. No. 13520, Nov. 20, 2009, 74 F.R. 62201, provided:

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, deter-

mine 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 pre-payment 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 com-

promise 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.

BARACK OBAMA.

FINDING AND RECAPTURING IMPROPER PAYMENTS

Memorandum of President of the United States, Mar. 10, 2010, 75 F.R. 12119, provided:

Memorandum for the Heads of Executive Departments and Agencies

My Administration is committed to reducing payment errors and eliminating waste, fraud, and abuse in Federal programs—a commitment reflected in Executive Order 13520 of November 20, 2009, Reducing Improper Payments. Executive departments and agencies should use every tool available to identify and subse-

quently reclaim the funds associated with improper payments. Thorough identification of improper payments promotes accountability at executive departments and agencies; it also makes the integrity of Federal spending transparent to taxpayers. Reclaiming the funds associated with improper payments is a critical component of the proper stewardship and protection of taxpayer dollars, and it underscores that waste, fraud, and abuse by entities receiving Federal payments will not be tolerated.

Today, to further intensify efforts to reclaim improper payments, my Administration is expanding the use of "Payment Recapture Audits," which have proven to be effective mechanisms for detecting and recapturing payment errors. A Payment Recapture Audit is a process of identifying improper payments paid to contractors or other entities whereby highly skilled accounting specialists and fraud examiners use state-of-the-art tools and technology to examine payment records and uncover such problems as duplicate payments, payments for services not rendered, overpayments, and fictitious vendors. (A Payment Recapture Audit as used in this memorandum shall have the same meaning as the term "recovery audit" as defined in Appendix C to Office of Management and Budget Circular A-123.) One approach that has worked effectively is using professional and specialized auditors on a contingency basis, with their compensation tied to the identification of misspent funds.

Therefore, I hereby direct executive departments and agencies to expand their use of Payment Recapture Audits, to the extent permitted by law and where cost-effective. The Director of the Office of Management and Budget (OMB) shall develop guidance within 90 days of the date of this memorandum on actions executive departments and agencies must take to carry out the requirements of this memorandum. The guidance may require additional actions and strategies designed to improve the recapture of improper payments, including, as appropriate, agency-specific targets for increasing recoveries. The Director of the OMB shall further coordinate with the Council for Inspectors General on Integrity and Efficiency to identify an appropriate process for obtaining review by Inspectors General of the effectiveness of agency efforts under this memorandum. The agencies' expanded use of Payment Recapture Audits does not preclude Offices of Inspectors General from performing any activities to identify and prevent improper payments.

Nothing in this memorandum 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.

This memorandum 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.

The Director of the OMB is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

ENHANCING PAYMENT ACCURACY THROUGH A "DO NOT PAY LIST"

Memorandum of President of the United States, June 18, 2010, 75 F.R. 35953, provided:

Memorandum for the Heads of Executive Departments and Agencies

My Administration is committed to eliminating waste, fraud, and abuse in Federal programs, including reducing and recapturing erroneous payments—a commitment I reinforced in Executive Order 13520 of November 20, 2009, and in a memorandum to the heads of executive departments and agencies (agencies) of March 10, 2010. While identifying and recapturing improper payments is important, prevention of payment

errors before they occur should be the first priority in protecting taxpayer resources from waste, fraud, and abuse. In those cases where data available to agencies clearly shows that a potential recipient of a Federal payment is ineligible for it, subsequent payment to that recipient is unacceptable. We must ensure that such payments are not made.

Agencies maintain many databases containing information on a recipient's eligibility to receive Federal benefits payments or Federal awards, such as grants and contracts. By checking these databases before making payments or awards, agencies can identify ineligible recipients and prevent certain improper payments from being made in the first place.

Therefore, I hereby direct agencies to review current pre-payment and pre-award procedures and ensure that a thorough review of available databases with relevant information on eligibility occurs before the release of any Federal funds, to the extent permitted by law. At a minimum, agencies shall, before payment and award, check the following existing databases (where applicable and permitted by law) to verify eligibility: the Social Security Administration's Death Master File, the General Services Administration's Excluded Parties List System, the Department of the Treasury's Debt Check Database, the Department of Housing and Urban Development's Credit Alert System or Credit Alert Interactive Voice Response System, and the Department of Health and Human Services' Office of Inspector General's List of Excluded Individuals/Entities. This network of databases, and additional databases so designated by the Director of the Office of Management and Budget (OMB) in consultation with agencies, shall be collectively known as the "Do Not Pay List." This memorandum requires agencies to review these databases with the recognition that there may be circumstances when the law nevertheless requires a payment or award to be made to a recipient listed in them. My Administration began coordination of the databases discussed in this memorandum in April 2010 by launching the Federal Awardee Performance and Integrity Information System (FAPIIS), which integrates various sources of information on the eligibility of Government contractors for award. No later than 120 days of the date of this memorandum, the Director of the OMB shall provide to the President a plan for completing integration for the remaining databases, to the extent permitted by law, so that agencies can access them through a single entry point.

Each agency shall, within 90 days of the date of this memorandum, submit to the OMB a plan that includes information on its current pre-payment and pre-award procedures and a list of databases that the agency checks pursuant to those procedures. Within 180 days of the date of this memorandum, the Director of the OMB shall issue guidance, to be developed in consultation with affected agencies and taking into account current agency pre-payment and pre-award practices, on actions agencies must take to carry out this memorandum's requirements. This guidance shall clarify that the head of each agency is responsible for ensuring an efficient and accurate process for determining whether the information provided on the "Do Not Pay List" is sufficient to stop a payment, consistent with applicable laws and regulations, and, if so, whether a payment should be stopped under the circumstances. In addition, this guidance shall identify best practices and databases that agencies should utilize to conduct pre-payment checks to ensure that only eligible recipients receive Government benefits or payments.

This memorandum 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.

The Director of the OMB is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 3322. Disbursing officials

(a) The Secretary of the Treasury shall transfer public money to a disbursing official only by draft or warrant written on the Treasury. Except as provided in section 3716 and section 3720A of this title and subsection (b) of this section, a disbursing official shall—

(1) deposit public money as required by section 3302 of this title; and

(2) draw public money from the Treasury or a depository only—

(A) as necessary to make payments; and

(B) payable to persons to whom payment is to be made.

(b) In a place without a depository, the Secretary, on deciding it is essential to the public interest, may authorize specially in writing that public money be—

(1) deposited in any other public depository; or

(2) kept in another manner under regulations the Secretary decides are the safest and most effective in making a payment to a public creditor easier.

(c) A disbursing official is not liable for an overpayment provided under a United States Government bill of lading or transportation request when the overpayment is caused by the—

(1) use of improper transportation rates or classifications if the Administrator of General Services has determined that verification by a prepayment audit conducted pursuant to section 3726(a) of this title for a particular mode or modes of transportation, or for an agency or subagency, will not adequately protect the interests of the Government; or

(2) failure to deduct the proper amount under—

(A) a land grant law; or

(B) an equalization or other agreement.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 950; Pub. L. 98-216, §1(3), Feb. 14, 1984, 98 Stat. 3; Pub. L. 104-134, title III, §31001(g)(1)(A), Apr. 26, 1996, 110 Stat. 1321-363; Pub. L. 105-264, §3(a)(1), Oct. 19, 1998, 112 Stat. 2352.)

HISTORICAL AND REVISION NOTES 1982 ACT

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3322(a)	31:492(a).	R.S. §3620(a); Feb. 27, 1877, ch. 69(7th complete par. on p. 249), 19 Stat. 249; Aug. 28, 1965, Pub. L. 89-145, §1(1), 79 Stat. 582.
3322(b)	31:82g(related to disbursing officers).	June 1, 1942, ch. 320(related to disbursing officers), 56 Stat. 306.

In the section, the words "disbursing official" are substituted for "disbursing officer" for consistency in the revised title.

In subsection (a), before clause (1), the words "Secretary of the Treasury" are substituted for "Treasurer of the United States" because of the source provisions restated in section 321(c) of the revised title. The words "or an assistant treasurer of the United States" in section 3620(a) of the Revised Statutes are omitted as obsolete because of the 1st-4th pars. under the heading "Independent Treasury" in the Act of May 29, 1920 (ch. 214, 41 Stat. 654). In clause (1), the words "as required by section 3302 of this title" are substituted for "with the Treasurer or some one of the assistant treasurers of