

(e) The Secretary may waive any provision of this section as may be necessary to ensure that claimants receive timely payments.

(f) Under such conditions as the Secretary may prescribe, the Secretary may delegate duties and powers of the Secretary under this section to the head of an agency. Consistent with a delegation from the Secretary under this subsection, the head of an agency may redelegate those duties and powers to officers or employees of the agency.

(g) This section does not relieve—

- (1) a forger from civil or criminal liability; or
- (2) a transferee or party on a check after the forgery from liability—

(A) on the express or implied warranty of prior endorsements of the transferee or party; or

(B) to refund amounts to the Secretary.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 957; Pub. L. 104–134, title III, § 31001(x)(3), Apr. 26, 1996, 110 Stat. 1321–377.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3343(a)	31:561.	Nov. 21, 1941, ch. 489, §§ 1–3, 55 Stat. 777.
3343(b)	31:562. 31:563a(1st sentence).	Nov. 21, 1941, ch. 489, 55 Stat. 777, § 4; added Dec. 22, 1974, Pub. L. 93–539, § 1(b), 88 Stat. 1738.
3343(c)	31:563a(2d sentence).	
3343(d)	31:563(words after 3d comma). 31:563a(last sentence).	
3343(e)	31:563(words before 3d comma).	

Subsection (a) is substituted for 31:561 for clarity and consistency in the revised title and with other titles of the United States Code and to eliminate unnecessary words.

In subsection (b), the text of 31:563a(1st sentence) is omitted because of section 321 of the revised title. Before clause (1), the word “Secretary” is substituted for “Treasurer of the United States” before “is authorized and directed” in 31:562 because of the source provisions restated in section 321(c) of the revised title. The words “prior to reclamation” and “heretofore or hereafter” are omitted as unnecessary. The words “Treasury or a depository designated by the Secretary” are substituted for “Treasurer of the United States” before “has been lost or stolen” because of the source provisions restated in section 321 of the revised title and Department of the Treasury Order 229 of January 14, 1974 (39 F.R. 2280) and for consistency in the revised title. The words “it is established” are omitted as unnecessary. In clause (2), the words “Secretary or a depository” are substituted for “Treasurer” for consistency. In clause (3), the words “either directly or indirectly” are omitted as surplus.

In subsection (c), the words “drawn on a designated depository” are added because of the restatement.

In subsection (d), the words “The Secretary shall deposit immediately to the credit of the Fund amounts recovered from a forger” are substituted for 31:563(words after 3d comma) to eliminate unnecessary words. The words “The liability and restoration provisions of section 563 of this title shall apply with respect to checks drawn on designated depositories” in 31:563a(last sentence) are omitted as unnecessary because of the restatement. The words “because of a forged check drawn on a designated depository” are added for clarity. The words “credited to” are substituted for “used, as required, to reimburse” for clar-

ity and to eliminate unnecessary words. The word “payment” is substituted for “settlement” for consistency. The words “under subsection (b) of this section” are added for clarity.

In subsection (e), the word “Secretary” is substituted for “Treasurer of the United States” because of the source provisions restated in section 321(c) of the revised title.

Editorial Notes

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–134, § 31001(x)(3)(A), amended second sentence generally. Prior to amendment, second sentence read as follows: “Amounts may be appropriated to the Fund.”

Subsec. (b). Pub. L. 104–134, § 31001(x)(3)(B)(i), inserted “in the determination of the Secretary the payee or special endorse establishes that” after “without interest if” in introductory provisions.

Subsec. (b)(2) to (4). Pub. L. 104–134, § 31001(x)(3)(B)(ii)–(iv), inserted “and” at end of par. (2), substituted period for “; and” at end of par. (3), and struck out par. (4) which read as follows: “recovery from the forger, a transferee, or a party on the check after the forgery has been or may be delayed or unsuccessful.”

Subsec. (d). Pub. L. 104–134, § 31001(x)(3)(C), inserted after first sentence “The Secretary may use amounts in the Fund to reimburse payment certifying or authorizing agencies for any payment that the Secretary determines would otherwise have been payable from the Fund, and may reimburse certifying or authorizing agencies with amounts recovered because of payee non-entitlement.”

Subsecs. (e) to (g). Pub. L. 104–134, § 31001(x)(3)(D), (E), added subsecs. (e) and (f) and redesignated former subsec. (e) as (g).

Statutory Notes and Related Subsidiaries

AVAILABILITY OF FUND

Pub. L. 108–447, div. H, title II, § 220(b), Dec. 8, 2004, 118 Stat. 3242, provided that: “The Check Forgery Insurance Fund (31 U.S.C. 3343) shall be available to fund amounts relating to the payment of items listed in 31 U.S.C. 3333(a)(1), as amended above [Pub. L. 108–447, § 220(a)(1)], prior to the enactment of this Act [Dec. 8, 2004].”

SUBCHAPTER IV—IMPROPER PAYMENTS

§ 3351. Definitions

In this subchapter:

(1) **ANNUAL FINANCIAL STATEMENT.**—The term “annual financial statement” means the annual financial statement required under section 3515 of this title or similar provision of law.

(2) **COMPLIANCE.**—The term “compliance” means that an executive agency—

(A) has—

(i) published improper payments information with the annual financial statement of the executive agency for the most recent fiscal year; and

(ii) posted on the website of the executive agency that statement and any accompanying materials required under guidance of the Office of Management and Budget;

(B) if required, has conducted a program specific risk assessment for each program or activity that conforms with the requirements under section 3352(a);

(C) if required, publishes improper payments estimates for all programs and activities identified under section 3352(a) in the accompanying materials to the annual financial statement;

(D) publishes programmatic corrective action plans prepared under section 3352(d) that the executive agency may have in the accompanying materials to the annual financial statement;

(E) publishes improper payments reduction targets established under section 3352(d) that the executive agency may have in the accompanying materials to the annual financial statement for each program or activity assessed to be at risk, and has demonstrated improvements and developed a plan to meet the reduction 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 3352(c).

(3) **DO NOT PAY INITIATIVE.**—The term “Do Not Pay Initiative” means the initiative described in section 3354(b).

(4) **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 an overpayment or underpayment, under a statutory, contractual, administrative, or other legally applicable requirement; and

(B) includes—

(i) any payment to an ineligible recipient;

(ii) any payment for an ineligible good or service;

(iii) any duplicate payment;

(iv) any payment for a good or service not received, except for those payments where authorized by law; and

(v) any payment that does not account for credit for applicable discounts.

(5) **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.

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

(7) **RECOVERY AUDIT.**—The term “recovery audit” means a recovery audit described in section 3352(i).

(8) **STATE.**—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.

(Added Pub. L. 116-117, §2(a), Mar. 2, 2020, 134 Stat. 113.)

Executive Documents

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, determine the extent of oversight warranted, and provide the agency head with recommendations, if any, for modifying the agency's methodology, improper payment reduction plans, or program access and participation plans.

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

sultation 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 compromise an ongoing criminal or civil investigation, for knowingly failing timely to disclose credible evidence of significant overpayments received on Government contracts.

(b) Within 30 days of the date of this order, the Director of OMB shall establish a working group consisting of Federal and elected State and local officials to make recommendations to the Director of OMB designed to improve the effectiveness of single audits of State and local governments and non-profit organizations that are expending Federal funds. The Director of OMB may designate an appropriate official to serve as Chair of the working group to convene its meetings and direct its work. The working group's recommendations shall

be prepared in consultation with the CIGIE and submitted within 180 days of the date of this order. The recommendations shall address, among other things, the effectiveness of single audits in identifying improper payments and opportunities to streamline or eliminate single audit requirements where their value is minimal.

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

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

SEC. 6. *General Provisions.*

(a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department, agency, the head thereof, or any agency Inspector General; or

(ii) functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) Nothing in this order shall be construed to require the disclosure of classified information, law enforcement sensitive information, or other information that must be protected in the interests of national security.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

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

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 subsequently 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 recap-

turing 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.

§ 3352. Estimates of improper payments and reports on actions to reduce improper payments

(a) IDENTIFICATION OF SUSCEPTIBLE PROGRAMS AND ACTIVITIES.—

(1) IN GENERAL.—The head of each executive agency shall, in accordance with guidance prescribed by the Director of the Office of Management and Budget—

(A) periodically review all programs and activities that the head of the executive agency administers; and

(B) identify all programs and activities with outlays exceeding the statutory threshold dollar amount described in paragraph (3)(A)(i) that may be susceptible to significant improper payments.

(2) FREQUENCY.—A review under paragraph (1) shall be performed for each program and activity that the head of an executive agency administers not less frequently than once every 3 fiscal years.

(3) RISK ASSESSMENTS.—

(A) DEFINITION OF SIGNIFICANT.—In this paragraph, the term "significant" means that, in the preceding fiscal year, the sum of a program or activity's improper payments and payments whose propriety cannot be determined by the executive agency due to lacking or insufficient documentation may have exceeded—

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

(ii) \$100,000,000.

(B) SCOPE.—In conducting a review under paragraph (1), the head of each executive 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 executive 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 executive 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;

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

(viii) similarities to other programs or activities that have reported improper payment estimates or been deemed susceptible to significant improper payments;

(ix) the accuracy and reliability of improper payment estimates previously reported for the program or activity, or other indicator of potential susceptibility to improper payments identified by the Inspector General of the executive agency, the Government Accountability Office, other audits performed by or on behalf of the Federal, State, or local government, disclosures by the executive agency, or any other means;

(x) whether the program or activity lacks information or data systems to confirm eligibility or provide for other payment integrity needs; and