

(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

(xi) the risk of fraud as assessed by the executive agency under the Standards for Internal Control in the Federal Government published by the Government Accountability Office (commonly known as the “Green Book”).

(C) ANNUAL REPORT.—Each executive agency shall publish an annual report that includes—

(i) a listing of each program or activity identified under paragraph (1), including the date on which the program or activity was most recently assessed for risk under paragraph (1); and

(ii) a listing of any program or activity for which the executive agency makes any substantial changes to the methodologies of the reviews conducted under paragraph (1).

(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 executive agency responsible for administering a high-priority program identified under subparagraph (A), establish annual targets and semi-annual or quarterly actions for reducing improper payments associated with the 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 executive agency with a program identified under paragraph (1)(A) shall on an annual basis submit to the Inspector General of the executive agency and the Office of Management and Budget, and make available to the public, including through a website, a report on that program.

(B) CONTENTS.—Each report submitted under subparagraph (A)—

(i) shall describe any action the executive agency—

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

(II) intends to take to prevent future improper payments; and

(ii) shall not include—

(I) any referrals the executive agency made or anticipates making to the Department of Justice; or

(II) any information provided in connection with a referral described in subclause (I).

(C) PUBLIC AVAILABILITY ON CENTRAL WEBSITE.—The Office of Management and Budget shall make each report submitted

under subparagraph (A) 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 executive agency that submits a report under subparagraph (A) shall, for each program of the executive 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 executive 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 the appropriate authorizing and appropriations committees of Congress recommendations, which may be included in another report submitted by the Inspector General to Congress, for modifying any plans of the executive agency relating to the program, including improvements for improper payments determination and estimation methodology.

(F) ANNUAL MEETING.—Not less frequently than once every year, the head of each executive agency with a program identified under paragraph (1)(A), or a designee of the head of the executive agency, shall meet with the Director of the Office of Management and Budget, or a designee of the Director, to report on actions taken during the preceding year and planned actions to prevent improper payments.

(c) ESTIMATION OF IMPROPER PAYMENTS.—

(1) ESTIMATION.—With respect to each program and activity identified under subsection (a)(1), the head of the relevant executive agency shall—

(A) 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 under the program or activity; and

(B) include the estimates described in subparagraph (A) in the accompanying materials to the annual financial statement of the executive agency and as required in applicable guidance of the Office of Management and Budget.

(2) LACKING OR INSUFFICIENT DOCUMENTATION.—

(A) IN GENERAL.—For the purpose of producing an estimate under paragraph (1), when the executive agency cannot determine, due to lacking or insufficient documentation, whether a payment is proper or not, the payment shall be treated as an improper payment.

(B) SEPARATE REPORT.—The head of an executive agency may report separately on

what portion of the improper payments estimate for a program or activity of the executive agency under paragraph (1) is attributable to lacking or insufficient documentation.

(d) **REPORTS ON ACTIONS TO REDUCE IMPROPER PAYMENTS.**—With respect to any program or activity of an executive agency with estimated improper payments under subsection (c), the head of the executive agency shall provide with the estimate required under subsection (c) a report on what actions the executive 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 those expenditures would save in prevented or recovered improper payments, a statement of whether the executive agency has what is needed with respect to—

- (A) internal controls;
- (B) human capital; and
- (C) information systems and other infrastructure;

(3) if the executive agency does not have sufficient resources to establish and maintain effective internal controls as described in paragraph (2)(A), a description of the resources the executive agency has requested in the budget submission of the executive agency to establish and maintain those 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;

(5) a description of the steps the executive agency has taken to ensure that executive agency managers, programs, and, where appropriate, States and local governments 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; and

(6) a description of how the level of planned or completed actions by the executive agency to address the causes of the improper payments matches the level of improper payments, including a breakdown by category of improper payment and specific timelines for completion of those actions.

(e) **REPORTS ON ACTIONS TO RECOVER IMPROPER PAYMENTS.**—With respect to improper payments identified in a recovery audit, the head of the executive agency shall provide with the estimate required under subsection (c) a report on all actions the executive agency is taking to recover the improper payments, including—

(1) a discussion of the methods used by the executive agency to recover improper payments;

(2) the amounts recovered, outstanding, and determined to not be collectable, including the percent those amounts represent of the total improper payments of the executive agency;

(3) if a determination has been made that certain improper payments 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 executive agency has determined under subsection (i) 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 that executive agencies have taken to report information regarding improper payments and actions to recover improper payments to—

- (A) the Committee on Homeland Security and Governmental Affairs of the Senate;
- (B) the Committee on Oversight and Reform of the House of Representatives; and
- (C) the Comptroller General of the United States.

(2) **CONTENTS.**—Each report required under paragraph (1) shall include—

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

(B) an identification of the compliance status of each executive agency, as determined by the Inspector General of the executive agency under section 3353, to which this section applies;

(C) Governmentwide improper payment reduction targets;

(D) a Governmentwide estimate of improper payments; and

(E) a discussion of progress made towards meeting Governmentwide improper payment reduction targets.

(g) **GUIDANCE BY THE OFFICE OF MANAGEMENT AND BUDGET.**—

(1) **IN GENERAL.**—Not later than 1 year after the date of enactment of this section, the Director of the Office of Management and Budget shall prescribe guidance for executive agencies to implement the requirements of this section, which shall not include any exemptions to those requirements that are 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.

(h) DETERMINATIONS OF AGENCY READINESS FOR OPINION ON INTERNAL CONTROL.—The criteria required to be developed under section 2(g) of the Improper Payments Elimination and Recovery Act of 2010, as in effect on the day before the date of enactment of this section—

(1) shall continue to be in effect on and after the date of enactment of this section; and

(2) may be modified as determined appropriate by the Director of the Office of Management and Budget.

(i) RECOVERY AUDITS.—

(1) IN GENERAL.—

(A) CONDUCT OF AUDITS.—Except as provided under paragraph (3) and if not prohibited under any other provision of law, the head of each executive agency shall conduct recovery audits with respect to each program and activity of the executive agency that expends \$1,000,000 or more annually if conducting the audits would be cost effective.

(B) PROCEDURES.—In conducting a recovery audit under this subsection, the head of an executive agency—

(i) shall give priority to the most recent payments and to payments made in any program identified as susceptible to significant improper payments under subsection (a);

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

(iii) may conduct the recovery audit 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 a recovery audit procured by an executive agency by contract—

(i) subject to subparagraph (B)(iii), and except to the extent such actions are outside the authority of the executive agency under section 7103 of title 41, the head of the executive agency may authorize the contractor to—

(I) notify entities, including individuals, of potential overpayments made to those entities;

(II) respond to questions concerning potential overpayments; and

(III) take other administrative actions with respect to an overpayment claim made or to be made by the executive agency; and

(ii) the contractor shall not have the authority to make a final determination relating to whether any overpayment occurred or whether to compromise, settle, or terminate an overpayment claim.

(D) CONTRACT TERMS AND CONDITIONS.—

(i) IN GENERAL.—The executive agency shall include in each contract for procure-

ment of performance of a recovery audit a requirement that the contractor shall—

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

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

(III) report to the executive 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.—Each executive agency shall, on an annual basis, include in annual financial statement of the executive agency a report on actions taken by the executive agency during the preceding fiscal year to address the recommendations described in clause (i)(I).

(E) AGENCY ACTION FOLLOWING NOTIFICATION.—Each executive agency shall—

(i) take prompt and appropriate action in response to a report or notification by a contractor under subclause (I) or (II) of subparagraph (D)(i) to collect an overpayment; and

(ii) forward to other executive agencies any information that applies to that executive agency.

(2) DISPOSITION OF AMOUNTS RECOVERED.—

(A) IN GENERAL.—Amounts collected by executive agencies each fiscal year through recovery audits shall be treated in accordance with this paragraph.

(B) DISTRIBUTION.—The head of an executive agency shall determine the distribution of collected amounts described in subparagraph (A), less amounts needed to fulfill the purposes of section 3562(a) of this title, in accordance with subparagraphs (C), (D), and (E).

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

(i) shall be available to the head of the executive agency to carry out the financial management improvement program of the executive agency under paragraph (3);

(ii) may be credited, if applicable, for the purpose described in clause (i) by the head of an executive agency to any executive 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 the purpose described in clause (i) and shall remain available until expended.

(D) USE FOR ORIGINAL PURPOSE.—Not more than 25 percent of the amounts collected by an executive agency through recovery audits—

(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 an overpayment was made has expired—

(I) in the case of recoveries of overpayments that are made from a trust or special fund account, shall revert to that account; and

(II) in the case of other recoveries of overpayments—

(aa) for amounts that are recovered more than 5 fiscal years from the last fiscal year in which the funds were available for obligation, shall be deposited in the Treasury as miscellaneous receipts; and

(bb) for other amounts, shall be newly available for the same time period as the funds were originally available for obligation.

(E) **USE FOR INSPECTOR GENERAL ACTIVITIES.**—Not more than 5 percent of the amounts collected by an executive agency through recovery audits—

(i) shall be available to the Inspector General of that executive agency for—

(I) the Inspector General to carry out this Act; 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.

(F) **REMAINDER.**—Amounts collected that are not applied in accordance with subparagraph (B), (C), (D), or (E) 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, those amounts shall revert to those accounts.

(G) **DISCRETIONARY AMOUNTS.**—This paragraph shall apply only to recoveries of overpayments that are made from discretionary appropriations, as defined in section 250(c)(7) 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 before the date of enactment of the Improper Payments Elimination and Recovery Act of 2010, as in effect on the day before the date of enactment of this section.

(H) **APPLICATION.**—This paragraph shall not apply to the recovery of an overpayment if the appropriation from which the overpayment was made has not expired.

(3) **FINANCIAL MANAGEMENT IMPROVEMENT PROGRAM.**—

(A) **REQUIREMENT.**—The head of each executive 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 a program described in subparagraph (A), the head of an executive agency—

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

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

(4) **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 the recovery auditing or recovery activity and governmental oversight of the 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.

(5) **RULE OF CONSTRUCTION.**—Except as provided under paragraph (4), nothing in this subsection shall be construed as terminating or in any way limiting authorities that are otherwise available to executive agencies under existing provisions of law to recover improper payments and use recovered amounts.

(Added Pub. L. 116–117, §2(a), Mar. 2, 2020, 134 Stat. 114.)

Editorial Notes

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsecs. (g)(1), (h), and (i)(2)(G), is the date of enactment of Pub. L. 116–117, which was approved Mar. 2, 2020.

Section 2(g) of the Improper Payments Elimination and Recovery Act of 2010, referred to in subsec. (h), is section 2(g) of Pub. L. 111–204, July 22, 2010, 124 Stat. 2228, which was formerly set out as a note under section 3321 of this title, prior to repeal by Pub. L. 116–117, §3(a)(2), Mar. 2, 2020, 134 Stat. 133.

This Act, referred to in subsec. (i)(2)(E)(i)(I), probably means Pub. L. 116–117, which enacted this subchapter, amended section 3562 of this title, section 612 of Title 6, Domestic Security, and section 1397ee of Title 42, The Public Health and Welfare, amended provisions set out as a note under 5701 of Title 5, Government Organization and Employees, and repealed provisions set out as notes under sections 3301 and 3321 of this title. For complete classification of this Act to the Code, see Short Title of 2020 Amendment note set out under section 3301 of this title and Tables.

The date of enactment of the Improper Payments Elimination and Recovery Act of 2010, referred to subsec. (i)(2)(G), is the date of enactment of Pub. L. 111–204, which was approved July 22, 2010.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

§ 3353. Compliance

(a) ANNUAL COMPLIANCE REPORT BY INSPECTORS GENERAL OF EXECUTIVE AGENCIES.—

(1) IN GENERAL.—Each fiscal year, the Inspector General of each executive agency shall—

(A) determine whether the executive agency is in compliance; and

(B) submit a report on the determination made under subparagraph (A) to—

- (i) the head of the executive agency;
- (ii) the Committee on Homeland Security and Governmental Affairs of the Senate;
- (iii) the Committee on Oversight and Reform of the House of Representatives; and
- (iv) the Comptroller General of the United States.

(2) DEVELOPMENT OR USE OF A CENTRAL WEBSITE.—The Council of the Inspectors General on Integrity and Efficiency (in this subsection referred to as the “Council”) shall develop a public central website, or make use of a public central website in existence on the date of enactment of this section, to contain individual compliance determination reports issued by Inspectors General under paragraph (1)(B) and such additional information as determined by the Council.

(3) OMB GUIDANCE.—Not later than 180 days after the date of enactment of this section, the Director of the Office of Management and Budget, in consultation with the Council and with consideration given to the available resources and independence of individual Offices of Inspectors General, shall develop and promulgate guidance for the compliance determination reports issued by the Inspectors General under paragraph (1)(B), which shall require that—

(A) the reporting format used by the Inspectors General is consistent;

(B) Inspectors General evaluate and take into account the adequacy of executive agency risk assessments, improper payment estimates methodology, and executive agency action plans to address the causes of improper payments;

(C) Inspectors General take into account whether the executive agency has correctly identified the causes of improper payments and whether the actions of the executive agency to address those causes are adequate and effective;

(D) Inspectors General evaluate the adequacy of executive agency action plans on how the executive agency addresses the causes of improper payments; and

(E) as part of the report, Inspectors General include an evaluation of executive agency efforts to prevent and reduce improper payments and any recommendations for actions to further improve that prevention and reduction.

(4) CIGIE GUIDANCE.—Not later than 180 days after the date of enactment of this section, the Council shall, with consideration given to the available resources and independence of individual Offices of Inspectors General, develop and promulgate guidance that specifies proce-

dures for compliance determinations made by the Inspectors General under paragraph (1)(A), which shall describe procedures for Inspectors General—

(A) to make the determinations consistent regarding compliance; and

(B) to evaluate—

(i) for compliance with the requirement described in section 3351(2)(B), the risk assessment methodology of the executive agency, including whether the audits, examinations, and legal actions of the Inspector General indicate a higher risk of improper payments or actual improper payments that were not included in the risk assessments of the executive agency conducted under section 3352(a);

(ii) for compliance with the requirement described in section 3351(2)(C), the accuracy of the rate estimates and whether the sampling and estimation plan used is appropriate given program characteristics;

(iii) for compliance with the requirement described in section 3351(2)(D), the corrective action plans and whether the plans are adequate and focused on the true causes of improper payments, including whether the corrective action plans are—

- (I) reducing improper payments;
- (II) effectively implemented; and
- (III) prioritized within the executive agency;

(iv) the adequacy of executive agency action plans to address the causes of improper payments;

(v) executive agency efforts to prevent and reduce improper payments, and any recommendations for actions to further improve; and

(vi) whether an executive agency has published an annual financial statement in accordance with the requirement described in section 3351(2)(A).

(b) REMEDIATION.—

(1) NONCOMPLIANCE.—

(A) IN GENERAL.—If an executive agency is determined by the Inspector General of that executive agency not to be in compliance under subsection (a) in a fiscal year with respect to a program or activity, the head of the executive agency shall submit to the appropriate authorizing and appropriations committees of Congress a plan describing the actions that the executive agency will take to come into compliance.

(B) PLAN.—The plan described in 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 executive agency official who shall be accountable for the progress of the executive 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 (ii) in

leading the efforts of the executive agency to come into compliance for each program or activity.

(2) NONCOMPLIANCE FOR 2 FISCAL YEARS.—

(A) IN GENERAL.—If an executive agency is determined by the Inspector General of that executive agency not to be in compliance under subsection (a) for 2 consecutive fiscal years for the same program or activity, the executive agency shall propose to the Director of the Office of Management and Budget additional program integrity proposals that would help the executive agency come into compliance.

(B) ADDITIONAL FUNDING.—

(i) IN GENERAL.—If the Director of the Office of Management and Budget determines that additional funding would help an executive agency described in subparagraph (A) come into compliance, the head of the executive agency shall obligate additional funding, in an amount determined by the Director, to intensified compliance efforts.

(ii) REPROGRAMMING OR TRANSFER AUTHORITY.—In providing additional funding under clause (i)—

(I) the head of an executive agency shall use any reprogramming or transfer authority available to the executive agency; and

(II) if after exercising the reprogramming or transfer authority described in subclause (I), additional funding is necessary to obligate the full level of funding determined by the Director of the Office of Management and Budget under clause (i), the executive agency shall submit a request to Congress for additional reprogramming or transfer authority.

(3) REAUTHORIZATION AND STATUTORY PROPOSALS.—If an executive agency is determined by the Inspector General of that executive agency not to be in compliance under subsection (a) for 3 consecutive fiscal years for the same program or activity, the head of the executive agency shall, not later than 30 days after the date of that determination, submit to the appropriate authorizing and appropriations committees of Congress and the Comptroller General of the United States—

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

(ii) proposed statutory changes necessary to bring the program or activity into compliance; or

(B) if the head of the executive agency determines that clauses (i) and (ii) of subparagraph (A) will not bring the program or activity into compliance, a description of the actions that the executive agency is undertaking to bring the program or activity into compliance and a timeline of when the compliance will be achieved.

(4) PLAN AND TIMELINE FOR COMPLIANCE.—If an executive agency is determined by the Inspector General of that executive agency not

to be in compliance under subsection (a) for 4 or more consecutive fiscal years for the same program or activity, the head of the executive agency shall, not later than 30 days after such determination, submit to the appropriate authorizing and appropriations committees of Congress a report that includes—

(A) the activities taken to comply with the requirements for 1, 2, 3, 4, or more years of noncompliance;

(B) a description of any requirements that were fulfilled for 1, 2, or 3 consecutive years of noncompliance that are still relevant and being pursued as a means to bring the program or activity into compliance and prevent and reduce improper payments;

(C) a description of any new corrective actions; and

(D) a timeline for when the program or activity will achieve compliance based on the actions described within the report.

(5) ANNUAL REPORT.—Each executive agency shall submit to the appropriate authorizing and appropriations committees of Congress and the Comptroller General of the United States—

(A) a list of each program or activity that was determined to not be in compliance under paragraph (1), (2), (3), or (4); and

(B) actions that are planned to bring the program or activity into compliance.

(c) COMPLIANCE ENFORCEMENT PILOT PROGRAMS.—The Director of the Office of Management and Budget may establish 1 or more pilot programs that shall test potential accountability mechanisms with appropriate incentives and consequences tied to success in ensuring compliance with this section and eliminating improper payments.

(d) IMPROVED ESTIMATES GUIDANCE.—The guidance required to be provided under section 3(b) of the Improper Payments Elimination and Recovery Improvement Act of 2012, as in effect on the day before the date of enactment of this section—

(1) shall continue to be in effect on and after the date of enactment of this section; and

(2) may be modified as determined appropriate by the Director of the Office of Management and Budget.

(Added Pub. L. 116-117, §2(a), Mar. 2, 2020, 134 Stat. 123.)

Editorial Notes

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsecs. (a)(2) to (4) and (d), is the date of enactment of Pub. L. 116-117, which was approved Mar. 2, 2020.

Section 3(b) of the Improper Payments Elimination and Recovery Improvement Act of 2012, referred to in subsec. (d), is section 3 of Pub. L. 112-248, Jan. 10, 2013, 126 Stat. 2390, which was formerly set out in a note under section 3321 of this title, prior to repeal by Pub. L. 116-117, §3(a)(3), Mar. 2, 2020, 134 Stat. 133.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and

Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

§ 3354. Do Not Pay Initiative

(a) PREPAYMENT AND PREAWARD PROCEDURES.—

(1) IN GENERAL.—Each executive 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 or award, each executive agency shall review as appropriate the following databases to verify eligibility of the payment and award:

(A) The death records maintained by the Commissioner of Social Security.

(B) The System for Award Management Exclusion Records, formerly known as the Excluded Parties List System, of the General Services Administration.

(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.

(F) Information regarding incarcerated individuals maintained by the Commissioner of Social Security under sections 202(x) and 1611(e) of the Social Security Act (42 U.S.C. 402(x), 1382(e)).

(b) DO NOT PAY INITIATIVE.—

(1) IN GENERAL.—There is the Do Not Pay Initiative, which shall include—

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

(B) use of other databases designated by the Director of the Office of Management and Budget, or the designee of the Director, in consultation with executive 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, or the head of any executive agency designated by the Director, 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.—

(A) IN GENERAL.—For purposes of identifying and preventing improper payments, each executive agency shall have access to, and use of, the Do Not Pay Initiative to verify payment or award eligibility in accordance with subsection (a).

(B) MATCHING PROGRAMS.—

(i) IN GENERAL.—The head of the agency operating the Working System may, in consultation with the Office of Manage-

ment and Budget, waive the requirements of section 552a(o) of title 5 in any case or class of cases for computer matching activities conducted under this section.

(ii) GUIDANCE.—The Director of the Office of Management and Budget may issue guidance that establishes requirements governing waivers under clause (i).

(C) OTHER ENTITIES.—Each State and any contractor, subcontractor, or agent of a State, including a State auditor or State program responsible for reducing improper payments of a federally funded State-administered program, and the judicial and legislative branches of the United States, as defined in paragraphs (2) and (3), respectively, of section 202(e) of title 18, shall have access to, and use of, the Do Not Pay Initiative for the purpose of verifying payment or award eligibility for payments.

(D) CONSISTENCY WITH PRIVACY ACT OF 1974.—To ensure consistency with the principles of section 552a of title 5 (commonly known as the “Privacy Act of 1974”), the Director of the Office of Management and Budget may issue guidance that establishes privacy and other requirements that shall be incorporated into Do Not Pay Initiative access agreements with States, including any contractor, subcontractor, or agent of a State, and the judicial and legislative branches of the United States, as defined in paragraphs (2) and (3), respectively, of section 202(e) of title 18.

(4) PAYMENT OTHERWISE REQUIRED.—When using the Do Not Pay Initiative, an executive 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) INITIAL WORKING SYSTEM.—The working system required to be established under section 5(d) of the Improper Payments Elimination and Recovery Improvement Act of 2012, as in effect on the day before the date of enactment of this section—

(1) shall continue to be in effect on and after the date of enactment of this section; and

(2) shall require each executive agency to review all payments and awards for all programs and activities of that executive agency through the working system.

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

(1) COMPUTER MATCHING BY EXECUTIVE 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 (commonly known as the “Privacy Act of 1974”), the head of each executive agency may enter into computer matching agreements with other heads of executive agencies 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 the date on which a proposal for an agreement under subparagraph (A) has been presented to a Data Integrity Board established under section 552a(u) of title 5 for consideration, the Data Integrity Board shall respond to the proposal.

(C) TERMINATION DATE.—An agreement described in 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 executive 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 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 relating to an agreement under subparagraph (A) is not required to contain a specific estimate of any savings under the computer matching agreement.

(2) GUIDANCE AND PROCEDURES BY THE OFFICE OF MANAGEMENT AND BUDGET.—The guidance, rules, and procedures required to be issued, clarified, and established under paragraphs (3) and (4) of section 5(e) of the Improper Payments Elimination and Recovery Improvement Act of 2012, as in effect on the day before the date of enactment of this section—

(A) shall continue to be in effect on and after the date of enactment of this section; and

(B) may be modified as determined appropriate by the Director of the Office of Management and Budget.

(3) COMPLIANCE.—The head of each executive agency, in consultation with the Inspector General of the executive 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.

(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed—

(A) to affect the rights of an individual under section 552a(p) of title 5; or

(B) to impede the exercise of an exemption provided to Inspectors General or by an executive agency in coordination with an Inspector General under section 6(j) of the Inspector General Act of 1978 (5 U.S.C. App.).¹

(e) PLAN TO CURB FEDERAL IMPROPER PAYMENTS TO DECEASED INDIVIDUALS BY IMPROVING THE QUALITY AND USE BY FEDERAL AGENCIES OF THE SOCIAL SECURITY ADMINISTRATION DEATH MASTER FILE AND OTHER DEATH DATA.—

(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 each State, the Director of the Office of Management and Budget shall conduct a study and update the plan required to be established under section 5(g) of the Improper Payments Elimination and Recovery Improvement Act of 2012, as in effect on the day before the date of enactment of this section, 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 described in this subsection shall include recommended actions by executive 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 executive agencies for determining ineligible payments due to the death of a recipient through proactive verification means; and

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

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

(Added Pub. L. 116-117, §2(a), Mar. 2, 2020, 134 Stat. 126.)

Editorial Notes

REFERENCES IN TEXT

Section 5 of the Improper Payments Elimination and Recovery Improvement Act of 2012, referred to in subsecs. (c), (d)(2), and (e)(1), is section 5 of Pub. L. 112-248, which was formerly set out in a note under section 3321 of this title, prior to repeal by Pub. L. 116-117, §3(a)(3), Mar. 2, 2020, 134 Stat. 133.

The date of enactment of this section, referred to in subsecs. (c), (d)(2), and (e)(1), (3), is the date of enactment of Pub. L. 116-117, which was approved Mar. 2, 2020.

Section 6(j) of the Inspector General Act of 1978, referred to in subsec. (d)(4)(B), is section 6(j) of Pub. L.

¹ See References in Text note below.

95-452, which was set out in the Appendix to Title 5, Government Organization and Employees, and was repealed and restated as section 406(j) of Title 5 by Pub. L. 117-286, §§ 3(b), 7, Dec. 27, 2022, 136 Stat. 4224, 4361.

§ 3355. Improving recovery of improper payments

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 executive 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.

(Added Pub. L. 116-117, § 2(a), Mar. 2, 2020, 134 Stat. 130.)

§ 3356. Improving the use of data by executive agencies for curbing improper payments

(a) PROMPT REPORTING OF DEATH INFORMATION BY THE DEPARTMENT OF STATE AND THE DEPARTMENT OF DEFENSE.—The procedure required to be established under section 7(a) of the Improper Payments Elimination and Recovery Improvement Act of 2012, as in effect on the day before the date of enactment of this section—

(1) shall continue to be in effect on and after the date of enactment of this section; and

(2) may be periodically modified as determined appropriate by the Director of the Office of Management and Budget.

(b) PROMPT REPORTING OF DEATH INFORMATION BY THE DEPARTMENT OF VETERANS AFFAIRS AND THE OFFICE OF PERSONNEL MANAGEMENT.—Not later than 1 year after the date of enactment of this section, the Secretary of Veterans Affairs and the Director of the Office of Personnel Management shall establish a procedure under which the Secretary and the Director—

(1) shall promptly and on a regular basis submit information relating to the deaths of individuals, including stopped payments data as applicable, to each executive agency for which the Director of the Office of Management and Budget determines receiving and using such information would be relevant and necessary; and

(2) to facilitate the centralized access of death data for the use of reducing improper payments, may identify additional Federal sources of death data and direct the data owner to provide that data to 1 or more executive agencies for that purpose.

(c) GUIDANCE TO EXECUTIVE AGENCIES REGARDING DATA ACCESS AND USE FOR IMPROPER PAYMENTS PURPOSES.—The guidance required to be issued under section 7(b) of the Improper Payments Elimination and Recovery Improvement Act of 2012, as in effect on the day before the date of enactment of this section—

(1) shall continue to be in effect on and after the date of enactment of this section; and

(2) may be modified as determined appropriate by the Director of the Office of Management and Budget.

(Added Pub. L. 116-117, § 2(a), Mar. 2, 2020, 134 Stat. 130.)

Editorial Notes

REFERENCES IN TEXT

The date of enactment of this section, referred to in text, is the date of enactment of Pub. L. 116-117, which was approved Mar. 2, 2020.

Section 7 of the Improper Payments Elimination and Recovery Improvement Act of 2012, referred to in subsecs. (a) and (c), is section 7 of Pub. L. 112-248, which was formerly set out in a note under section 3321 of this title, prior to repeal by Pub. L. 116-117, § 3(a)(3), Mar. 2, 2020, 134 Stat. 133.

§ 3357. Financial and administrative controls relating to fraud and improper payments

(a) DEFINITION.—In this section, the term “agency” has the meaning given the term in section 551 of title 5.

(b) GUIDELINES.—The guidelines required to be established under section 3(a) of the Fraud Reduction and Data Analytics Act of 2015, as in effect on the day before the date of enactment of this section—

(1) shall continue to be in effect on and after the date of enactment of this section; and

(2) may be periodically modified by the Director of the Office of Management and Budget, in consultation with the Comptroller General of the United States, as the Director and Comptroller General may determine necessary.

(c) REQUIREMENTS FOR CONTROLS.—The guidelines described in subsection (b) shall include—

(1) conducting an evaluation of fraud risks and using a risk-based approach to design and implement financial and administrative control activities to mitigate identified fraud risks;

(2) collecting and analyzing data from reporting mechanisms on detected fraud to monitor fraud trends and using that data and information to continuously improve fraud prevention controls; and

(3) using the results of monitoring, evaluation, audits, and investigations to improve fraud prevention, detection, and response.

(d) REPORT.—For each of fiscal years 2019 and 2020, each agency shall submit to Congress, as part of the annual financial report of the agency, a report of the agency on—

(1) implementing—

(A) the financial and administrative controls described in subsection (b);

(B) the fraud risk principle in the Standards for Internal Control in the Federal Government published by the Government Accountability Office (commonly known as the “Green Book”); and

(C) Office of Management and Budget Circular A-123, or any successor thereto, with respect to the leading practices for managing fraud risk;

(2) identifying risks and vulnerabilities to fraud, including with respect to payroll, bene-

ficiary payments, grants, large contracts, and purchase and travel cards; and

(3) establishing strategies, procedures, and other steps to curb fraud.

(Added Pub. L. 116–117, §2(a), Mar. 2, 2020, 134 Stat. 131.)

Editorial Notes

REFERENCES IN TEXT

Section 3(a) of the Fraud Reduction and Data Analytics Act of 2015, referred to in subsec. (b), is section 3(a) of Pub. L. 114–186, June 30, 2016, 130 Stat. 546, which was formerly set out in a note under section 3321 of this title, prior to repeal by Pub. L. 116–117, §3(a)(4), Mar. 2, 2020, 134 Stat. 133.

The date of enactment of this section, referred to in subsec. (b), is the date of enactment of Pub. L. 116–117, which was approved Mar. 2, 2020.

§ 3358. Interagency working group for Governmentwide payment integrity improvement

(a) WORKING GROUP.—

(1) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this section, there is established an interagency working group on payment integrity—

(A) to improve—

(i) State-administered Federal programs to determine eligibility processes and data sharing practices;

(ii) the guidelines described in section 3357(b) and other best practices and techniques for detecting, preventing, and responding to improper payments, including improper payments that are the result of fraud; and

(iii) the sharing and development of data analytics techniques to help prevent and identify potential improper payments, including those that are the result of fraud; and

(B) to identify any additional activities that will improve payment integrity of Federal programs.

(2) COMPOSITION.—The interagency working group established under paragraph (1) shall be composed of—

(A) the Director of the Office of Management and Budget;

(B) 1 representative from each of the agencies described in paragraphs (1) and (2) of section 901(b) of this title; and

(C) any other representatives of other executive agencies determined appropriate by the Director of the Office of Management and Budget, which may include the Chief Information Officer, the Chief Procurement Officer, the Chief Risk Officer, or the Chief Operating Officer of an executive agency.

(b) CONSULTATION.—The working group established under subsection (a)(1) may consult with Offices of Inspectors General and Federal and non-Federal experts on fraud risk assessments, administrative controls over payment integrity, financial controls, and other relevant matters.

(c) MEETINGS.—The working group established under subsection (a)(1) shall hold not fewer than 4 meetings per year.

(d) REPORT.—Not later than 240 days after the date of enactment of this section, the working

group established under subsection (a)(1) shall submit to Congress a report that includes—

(1) a plan containing tangible solutions to prevent and reduce improper payments; and

(2) a plan for State agencies to work with Federal agencies to regularly review lists of beneficiaries of State-managed Federal programs for duplicate enrollment between States, including how the Do Not Pay Business Center and the data analytics initiative of the Department of the Treasury could aid in the detection of duplicate enrollment.

(Added Pub. L. 116–117, §2(a), Mar. 2, 2020, 134 Stat. 132.)

Editorial Notes

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsecs. (a)(1) and (d), is the date of enactment of Pub. L. 116–117, which was approved Mar. 2, 2020.

CHAPTER 35—ACCOUNTING AND COLLECTION

SUBCHAPTER I—GENERAL

Sec.

3501. Definition.

SUBCHAPTER II—ACCOUNTING REQUIREMENTS, SYSTEMS, AND INFORMATION

3511. Prescribing accounting requirements and developing accounting systems.

3512. Executive agency accounting and other financial management reports and plans.

3513. Financial reporting and accounting system.

3514. Discontinuing certain accounts maintained by the Comptroller General.

3515. Financial statements of agencies.

3516. Reports consolidation.

SUBCHAPTER III—AUDITING AND SETTLING ACCOUNTS

3521. Audits by agencies.

3522. Making and submitting accounts.

3523. General audit authority of the Comptroller General.

3524. Auditing expenditures approved without vouchers.

3525. Auditing nonappropriated fund activities.

3526. Settlement of accounts.

3527. General authority to relieve accountable officials and agents from liability.

3528. Responsibilities and relief from liability of certifying officials.

3529. Requests for decisions of the Comptroller General.

3530. Adjusting accounts.

[3531. Repealed.]

3532. Notification of account deficiencies.

SUBCHAPTER IV—COLLECTION

3541. Distress warrants.

3542. Carrying out distress warrants.

3543. Postponing a distress warrant proceeding.

3544. Rights and remedies of the United States Government reserved.

3545. Civil action to recover money.

SUBCHAPTER V—PROCUREMENT PROTEST SYSTEM

3551. Definitions.

3552. Protests by interested parties concerning procurement actions.

3553. Review of protests; effect on contracts pending decision.

3554. Decisions on protests.