



Improper Payments Information Act of 2002: Background, Implementation, and Assessment

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May 7, 2010

Congressional Research Service

7-5700

www.crs.gov

RL34164

CRS Report for Congress

Prepared for Members and Committees of Congress

Summary

On November 26, 2002, the Improper Payments Information Act (IPIA) was signed into law as P.L. 107-300 (116 Stat. 2350). The law requires agencies to identify each year programs and activities vulnerable to significant improper payments, to estimate the amount of overpayments or underpayments, and to report to Congress on steps being taken to reduce such payments.

In May 2003, the Office of Management and Budget (OMB) issued guidance to agencies on the implementation of the IPIA, which was revised and incorporated into OMB Circular A-123 as Appendix C in August 2006. OMB's guidance, while consistent with some provisions of the IPIA, has been criticized on several counts. Whereas the statute requires agencies to report to Congress on all programs with more than \$10 million in estimated improper payments, OMB added an additional threshold, such that agencies must only report on programs with improper payments that exceed both \$10 million and 2.5% of total program payments. Critics have identified a number of examples of programs with improper payments over \$10 million that are not reported to Congress because they do not also meet the 2.5% threshold. In the 2006 update of its guidance, OMB stated that it may determine on a case-by-case basis that some programs are to be subject to annual Performance and Accountability Report requirements, even if they do not meet the 2.5% threshold.

OMB's guidance has also been criticized for permitting agencies to exempt some programs from the IPIA's annual requirement for risk assessment. Under the act, every program and activity is to be reviewed each year. OMB's guidance, however, now allows agencies to review a program once every three years if it has been deemed low-risk. Critics say this runs counter to the language and intent of the IPIA, and that it leaves open the possibility that improper payments might go undetected during the exemption period.

For FY2009, OMB reported a government-wide error rate of 5.0% and total improper payments of \$98 billion. This figure does not cover all at-risk outlays which lack improper payment estimates and are not yet reflected in the error rate or improper payment amounts. Until valid estimates become available for all risk-susceptible programs, the full extent of the improper payments problem will remain unknown.

In the 111th Congress, Senator Carper, along with four cosponsors, introduced S. 1508, the Improper Payments Elimination and Recovery Act of 2009, similar to S. 2583 as reported in the 110th Congress. On July 29, 2009, the bill, as amended, was ordered reported favorably by the full committee. A companion measure, H.R. 3393, was introduced in the House. In 2009, both House and Senate subcommittees held hearings relevant to the issue of improper payments. On April 28, 2010, the House passed H.R. 3393, as amended, under suspension of the rules by voice vote. President Obama has announced his support for the measures.

On November 20, 2009, President Obama issued E.O. 13520, "Reducing Improper Payments and Eliminating Waste in Federal Programs." A White House memorandum regarding "Finding and Recapturing Improper Payments" followed on March 10, 2010. On March 22, 2010, OMB issued government-wide guidance on the implementation of E.O. 13519.

This report will be updated as developments warrant.

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Background

Legislative History and Intent

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

Previously, there was no government-wide requirement for agencies to estimate or report in any systematic way on improper payments, although it is generally acknowledged that billions of dollars are involved. The Office of Management and Budget (OMB) estimated, for example, that in FY2005, improper payments under 47 federal programs totaled approximately \$37.3 billion.¹

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

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

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

In the written report of the Senate Committee on Governmental Affairs to accompany H.R. 4878, the provisions of the bill were explicitly linked to GAO recommendations offered in a best

¹ Testimony of Clay Johnson III, Deputy Director for Management, Office of Management and Budget, U.S. Congress, Statement before Senate Subcommittee on Federal Financial Management, Government Information, and International Security, *An Assessment of Improper Payment Information Act of 2002*, hearings, 109th Cong., 2nd sess., December 5, 2006, at http://hsgac.senate.gov/_files/ClayJohnsonTestimony05Dec2006ImproperPayments.pdf.

² Rep. Stephen Horn, “Debate on H.R. 4878,” remarks in the House, *Congressional Record*, daily edition, vol. 148 (July 9, 2002), p. H4379.

practices guide for agencies in managing improper payments, prepared at the request of the committee chairman, Senator Joseph Lieberman. The guide suggested that determining the nature and extent of risks for improper payments was a crucial step; H.R. 4878 would begin the process of improving the management of improper payments, following GAO's guidance, "by requiring that agencies annually estimate the amount of improper payments, and report on the steps they are taking to reduce the amounts of those payments in the largest programs."³

Major Provisions

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

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

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

Previous Improper Payment Efforts

The IPIA codified and expanded efforts already underway in the executive branch to reduce improper payments. In 2001, the Bush Administration designated improving financial performance as one of five government-wide initiatives in the President's Management Agenda (PMA). The establishment of a baseline on the extent of erroneous (improper) payments for major federal benefit programs was a key component of the financial management initiative.⁵ Agencies were to include information on erroneous payment rates for benefit and assistance

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

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

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

programs over \$2 billion as part of their FY2003 budget submissions. In July 2001, revisions to OMB Circular A-11 in Section 57 implemented this objective, requiring 15 federal agencies to include improper payment information with their initial FY2003 budget materials to OMB. Enactment of the IPIA extended improper payment reporting requirements to all executive branch departments and agencies, lowered the threshold from \$2 billion to \$10 million, and designated Congress (as well as OMB) to receive the annual agency reports.

Implementation

Initial Guidance From OMB

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

Revision of OMB Circular A-123

In the summer of 2006, OMB issued a new appendix to OMB Circular A-123,⁷ updating the guidance in M-03-13. Appendix C, titled “Requirements for Effective Measurement and Remediation of Improper Payments,”⁸ contained two parts; the first addressed IPIA reporting and the second, recovery auditing.⁹ It began with new language, expanding and clarifying the definition of an improper payment:

An improper payment is any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. Incorrect amounts are overpayments and underpayments (including inappropriate denials of payment or services). An improper payment includes any payment

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

⁷ See OMB, *Management’s Responsibility for Internal Controls*, Circular No. A-123 revised, December 21, 2004, at http://www.whitehouse.gov/omb/circulars/a123/a123_rev.pdf.

⁸ See OMB, “Requirements for Effective Measurement and Remediation of Improper Payments,” Appendix C to OMB Circular A-123, August 10, 2006, available at http://www.whitehouse.gov/omb/circulars/a123/a123_appx-c.pdf. Hereafter, Appendix C.

⁹ Recovery auditing is designed to identify and then recoup erroneous payments by reviewing large volumes of purchase and contract records using ongoing, systematic procedures for data analysis.

that was made to an ineligible recipient or for an ineligible service, duplicate payments, payments for services not received, and payments that are for the incorrect amount. In addition, when an agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment must also be considered in error.¹⁰

Other noteworthy features in the update included provisions for alternative sampling methodologies, reporting requirements for certain low risk programs, and guidance for federal agencies that fund state-administered programs. The revision also contained a best practices listing for preventing, identifying, detecting, and recovering improper payments. Finally, while the definition of "significant erroneous payments" found in the previous OMB guidance was retained, A-123 Appendix C provided elaboration: "OMB may determine on a case-by-case basis that certain programs that do not meet the threshold requirements ... may still be subject to the annual PAR reporting requirement. This would most likely occur in programs with relatively high annual outlays."¹¹

Scorecard Standards and Ratings

The Bush Administration designated Eliminating Improper Payments (EIP) as a separate program initiative in the PMA in 2004.¹² Under the EIP initiative, 15 federal agencies received quarterly scorecard ratings from OMB for their efforts to identify, eliminate, and recover improper payments.¹³ The scorecard used a stoplight rating system of green for success, yellow for mixed results, and red for unsatisfactory. Agencies were rated against six EIP "standards for success," or core criteria (listed below). If an agency met all six of the criteria, it received a "green" rating; if it met the first four criteria, but not the fifth and sixth, it was rated "yellow"; and if an agency failed to meet any one of the first four criteria it was rated "red." The criteria an agency had to meet to "get to green" in the EIP initiative included the following:

- Have a risk assessment in place that identifies all programs that are at significant risk of improper payments;
- Have an OMB-approved plan for measuring improper payments on an annual basis and meet milestones established in the plan;
- Have an OMB-approved corrective action plan that includes reduction targets;
- Be in compliance with improper payments reporting requirements;

¹⁰ Appendix C, p. 2.

¹¹ *Ibid.*, p. 4. An example is given of a program with \$10 billion in annual outlays and a 1% error rate (below the 2.5% error rate threshold), yet resulting in \$100 million in improper payments. In such an instance, OMB may require that the program be designated as high risk and included in the agency's annual PAR (as a part of IPIA reporting).

¹² See discussion in *Fiscal Year 2006 Budget of the U.S. Government* (Washington: GPO, 2005), p. 54. OMB, *Improving the Accuracy and Integrity of Federal Payments*, January 25, 2005, p. i, at http://www.whitehouse.gov/results/agenda/ipia_govt_wide_report.pdf.

¹³ The 15 agencies that receive scorecard ratings for Eliminating Improper Payments are: the Departments of Agriculture, Defense, Education, Health and Human Services (HHS), Homeland Security (DHS), Housing and Urban Development (HUD), Labor, Transportation (DOT), Treasury, and Veterans Affairs (VA); and the Environmental Protection Agency (EPA), the National Science Foundation (NSF), the Office of Personnel Management (OPM), the Small Business Administration (SBA), and the Social Security Administration (SSA). Acronyms cited are used in **Figure 1**.

- Demonstrate that improper payments are being reduced consistent with reduction targets; and
- Have established improper payment recovery targets, and show it is actively meeting these targets.¹⁴

As indicated in **Figure 1**, results in the initial round for the EIP scorecards, released December 31, 2004, indicated that no agencies received “green,” five were “yellow,” and 10 were “red.”¹⁵ By December 31, 2008, the scorecard showed that five agencies were “green” in status, eight agencies were “yellow,” and two were “red.” In four years, the number of agencies receiving green increased from zero to nine, and the number of agencies receiving red declined from 10 to one. The first agency to attain green was the Department of Housing and Urban Development (HUD) on the June 2005 scorecard, joined the next quarter by the Department of Labor. The only agency to receive red grades throughout the period depicted was the Department of the Treasury.

Further examination of the data in **Figure 1**, however, discloses a more complicated picture. For example, the first three quarters in FY2007 had the same totals for the red (two), yellow (nine), and green (four) grades. Yet, there were noteworthy changes from the March to June 2007 ratings: HHS advanced from red to yellow, while DHS slipped from yellow back to red.

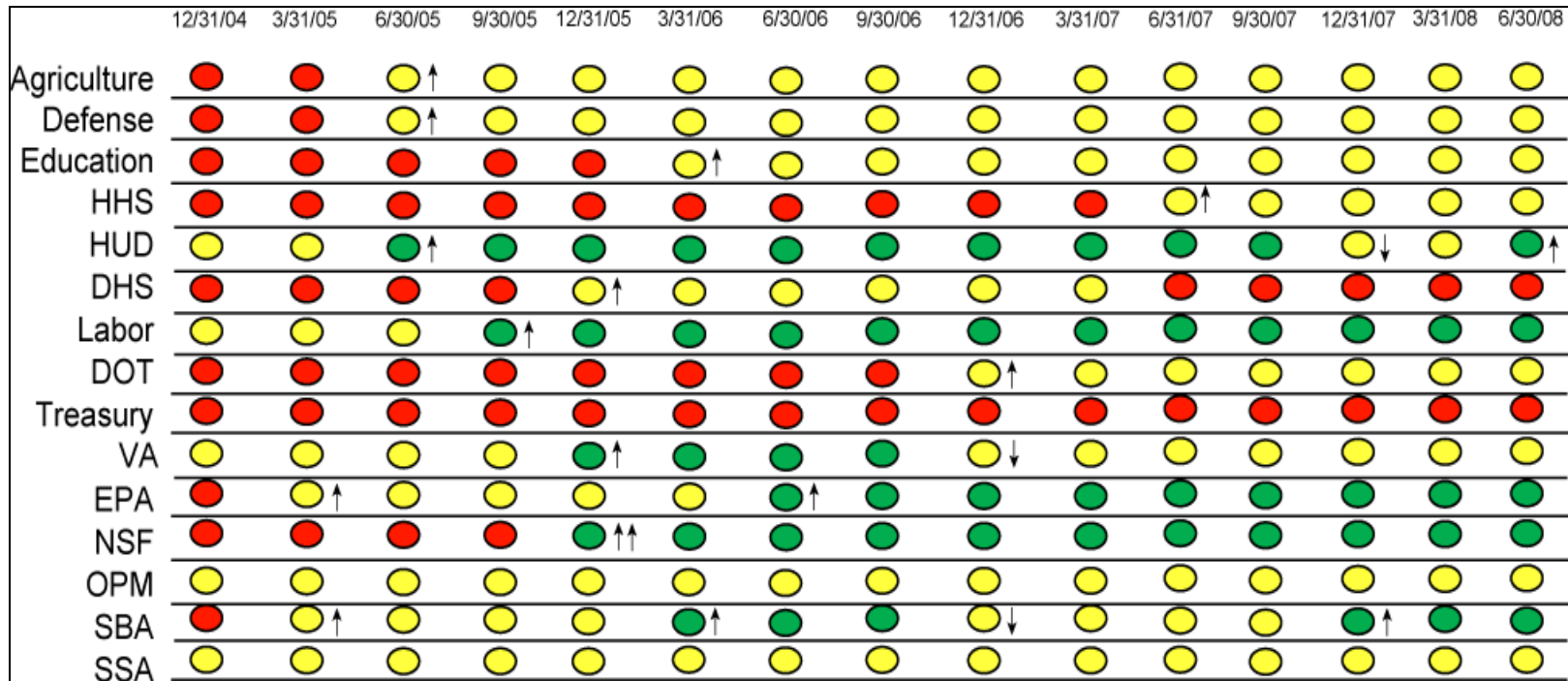
With respect to the scorecards depicted in **Figure 1**, the grades recorded for June 30, 2007, and September 30, 2007, were identical, as were the grades for December 31, 2007, and March 31, 2008. During those four quarters, HUD slipped from green to yellow for December 2007 and March 2008, but had returned to green by June 30, 2008. The only other change during this period was the movement of SBA from yellow to green. One might arguably suggest that many of the agencies (8 out of 15) experienced some difficulty in progressing from yellow to green in the scorecards. The scores for the final two quarters reflected only improvements; five agencies advanced from yellow to green, and one from red to yellow.

The up and down arrows in **Figure 1** indicate a change in grade from the previous quarter. During the 17 quarters covered, there were 23 instances where an agency’s grade changed from one quarter to the next. Most of the changes (19) reflected an improvement in rating, with the National Science Foundation (NSF) jumping from red to green in the final quarter of 2005 (hence the double arrows). On the other hand, there were four instances when an agency’s grade was lowered from one quarter to the next. The Department of Veterans Affairs (VA) received four yellows followed by four greens and then slipped back to yellow for eight quarters, but returned to green in the final quarter. The Small Business Administration (SBA) started with red, advanced to yellow for four quarters and then to green for three quarters, but slipped back to yellow for the three quarters, before returning to green. The DHS went from four reds to six yellows, regressed back to red for six quarters, then again returned to yellow for the final quarter.

¹⁴ The White House, *Scorecard Standards for Success*, at <http://georgewbush-whitehouse.archives.gov/results/agenda/standardsforsuccess08-2007.pdf>.

¹⁵ *Ibid.*, *Scorecard - December 31, 2004*, at <http://georgewbush-whitehouse.archives.gov/results/agenda/scorecard.html>.

Figure I. Eliminating Improper Payments Initiative's Quarterly Scorecards, FY2004-FY2008



Source: Office of Management and Budget. Electronic version of scorecards available at <http://georgewbush-whitehouse.archives.gov/results/agenda/scorecard.html>.

It is not clear how useful scorecard ratings were as indicators of agency results in eliminating improper payments. While OMB's standards for success overlapped with IPIA objectives, the scorecard ratings themselves appeared not to be tightly linked to improper payments rates or amounts. The Department of Labor (DOL), for example, improved from a "yellow" rating at the start of FY2005 to a "green" by the end of that fiscal year, even though its error rate increased during that time.¹⁶ Similarly, the Department of Housing and Urban Development (HUD), received a "green" rating in each quarter of FY2006, despite reporting nearly \$1.5 billion in improper payments that year.¹⁷ Under the scorecard grading system, then, an agency could receive the highest rating even when its error rate increased, or when the dollar value of its improper payments reached into the billions. On the other hand, as discussed in more detail below, an apparent increase in error rate or total amount of improper payments due an agency might actually reflect "progress" in identifying risk-susceptible programs and achieving viable estimates for more programs, thereby increasing transparency and accuracy.

Subsequent Developments

Implementation of the IPIA and associated efforts to identify, prevent, and recover improper payments continue to evolve. Statutory changes have occurred and new policy initiatives have commenced.

Additional Provisions in 2008

In 2008 two provisions contained in newly enacted public laws created additional tools for use by programs and agencies in their efforts "to reduce and recover improper payments by reducing administrative and verification errors." The Food, Conservation, and Energy Act of 2008 (P.L. 110-234) authorizes the federal government to trace and recover payments, such as tax refunds or public service retirement annuities, sent electronically to the wrong account or for an incorrect amount. According to OMB, savings from this tool are projected to be "\$53 million the first year and \$717 million over ten years." The Supplemental Security Income Extension for Elderly and Disabled Refugees Act (P.L. 110-328) allows states "to recover unemployment compensation debts due to fraud from Federal income tax refunds." OMB suggests that this new mechanism "will potentially save as much as \$1.3 billion over ten years."¹⁸

Initiatives in the Obama Administration

On November 20, 2009, President Obama issued E.O. 13520, "Reducing Improper Payments and Eliminating Waste in Federal Programs." As stated in Section 1, its purpose with respect to federal payments to individuals and businesses was to help ensure that "the right recipient is receiving the right payment for the right reason at the right time." Since no single action "will fully achieve these goals," the order unveils 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 [priority] improper payments;

¹⁶ OMB, *Improving the Accuracy and Integrity of Federal Payments*, January 31, 2007 at http://www.whitehouse.gov/omb/financial/reports/2007_ipia_report.pdf.

¹⁷ *Ibid.*

¹⁸ *Improving the Accuracy and Integrity of Federal Payments*, January 8, 2009, p. 8.

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.”¹⁹

On March 22, 2010, OMB issued government-wide guidance on the implementation of E.O. 13520, as Part III to OMB Circular A-123, Appendix C. As outlined in the transmittal memorandum from OMB to agency heads, five “significant components” were identified in the new Part III, including the following:

- specifying responsibilities for agency accountable officials;
- determining the programs subject to the Executive Order (i.e., high priority-programs);
- defining supplemental measures and targets for high priority programs;
- establishing reporting requirements under the Executive Order; and
- establishing procedures to identify entities with outstanding improper payments.²⁰

In addition, a White House memorandum to the heads of departments and agencies regarding “Finding and Recapturing Improper Payments” and dated March 10, 2010,²¹ requires agencies to expand their existing use of incentive-based audit procedures. The memo stipulates that a “payment recapture audit” has the same meaning as a “recovery audit,” as that term is defined in OMB Circular A-123, Appendix C, which states,

A Recovery Audit is a review and analysis of the agency’s books, supporting documents, and other available information supporting its payments that is specifically designed to identify overpayments to contractors that are due to payment errors. It is not an audit in the traditional sense. Rather, it is a control activity designed to assure the integrity of contract payments, and, as such, is a management function and responsibility.²²

The OMB director is to develop guidance within 90 days concerning actions to be taken by agencies to comply with the new requirements. The OMB instructions may include additional actions, such as setting agency-specific targets for increasing the recovery of improper payments.²³

¹⁹ Executive Order 13520, “Reducing Improper Payments,” 74 *Federal Register* 62201-62205, November 25, 2009.

²⁰ Memorandum from OMB Director Peter R. Oszag, M-10-13, *Issuance of Part III to OMB Circular A-123, Appendix C*, March 22, 2010, available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-13.pdf.

²¹ Presidential Memorandum, “Finding and Recapturing Improper Payments,” 75 *Federal Register* 12119-12129, March 15, 2010.

²² OMB Circular A-123, *Management’s Responsibility for Internal Control*, Appendix C, “Requirements for Effective Measurement and Remediation of Improper Payments,” August 10, 2006, p. 15, available at http://www.whitehouse.gov/omb/assets/omb/circulars/a123/a123_appx-c.pdf.

²³ For further discussion of the new initiative to capture and recover improper payments, see section on Recovery Auditing below.

Trends in Improper Payments

Since IPIA reporting began for FY2004, OMB has published aggregate annual improper payments data. Usually, improper payments data are included in an annual report titled “Improving the Accuracy and Integrity of Federal Payments,” although for FY2009 OMB has only issued a “fact sheet” and an accompanying table of improper payment rates rather than a full report.²⁴ **Table 1** shows government-wide improper payments rates and totals for the first five years of IPIA reporting.

Table 1. Improper Payment Trends, FY2004-FY2008

(in millions)

	At-Risk Federal Outlays ^a	Improper Payments	Error Rate
FY2004	\$1,035,354	\$45,004	4.3%
FY2005	\$1,224,920	\$38,472	3.1%
FY2006	\$1,394,027	\$40,588	2.8%
FY2007	\$1,493,335	\$42,984	2.8%
FY2008	\$1,839,235	\$72,120	3.9%
FY2009	\$1,984,485	\$98,453	5.0%

Source: Office of Management and Budget, *Improving the Accuracy and Integrity of Federal Payments*, January 8, 2009, p. 25. Office of Management and Budget, *Improving the Accuracy and Integrity of Federal Payments*, January 31, 2008, p. 43. Office of Management and Budget, *FY2009 Improper Payment Rates by Agency and Program*, November 17, 2009.

a. Column does not represent total federal outlays, but only includes outlays that (1) have been determined to be at risk and (2) have improper payments estimates. See the Federal Outlays section for more information.

Error Rate

The data in **Table 1** show that the error rate declined or remained stable in each of the three fiscal years after the government-wide baseline for improper payments was established in FY2004, then increased in FY2008 and FY2009. In its 2007 report, OMB suggested that the declining error rate between FY2004 and FY2006 was largely due to two factors: a reduction in improper payments reported under the Medicare Fee-for-Service program, and low improper payment rates among the programs that reported for the first time in either FY2005 or FY2006.²⁵ GAO has argued that, while improper payments have declined significantly under the fee-for-service component of Medicare, that was not necessarily a consequence of improved accountability of program dollars, but rather was due largely to “refinements” in the way HHS calculated the program’s improper payments estimate.²⁶

²⁴ OMB’s annual improper payments report is issued in the January or February following the end of the fiscal year that it covers. It is made available to the public through OMB’s website, at http://www.whitehouse.gov/omb/financial_fia_improper/.

²⁵ Medicare is comprised of a fee-for-service component (Parts A and B), a managed care component (Part C), and a prescription drug benefit component (Part D).

²⁶ Testimony of McCoy Williams, GAO Director of Financial Management and Assurance, *Improper Payments: Agencies’ Efforts to Address Improper Payment and Recovery Auditing Requirements Continue*, U.S. Congress, Senate (continued...)

The overall error rate did not change between FY2006 and FY2007, but rose to 3.9% in FY2008 and to 5.0% in FY2009. The increase between FY2007 and FY2008 appears to have been driven by the relatively high error rate—10.3%—of the 12 programs reported for the first time in FY2008, and by an increase in the FY2007 cohort error rate, which rose from 5.1% to 5.9%. Programs in the FY2008 cohort issued \$28.9 billion in improper payments. Just two of these programs, Medicaid and Medicare Advantage (Part C), accounted for \$25.5 billion in improper payments.

While the overall error rate declined or remained steady each year between FY2004 and FY2007, error rates of program cohorts—programs reported for the first time in the same fiscal year—show that progress in reducing improper payments has been uneven, with rates rising and falling over time. **Table 2** shows how the error rates for programs first reported in previous fiscal years changed over time. OMB did not release data by cohort for FY2009.

Table 2. Cohort Error Rates, FY2004-FY2008

Year First Reported	FY2004 Error Rate	FY2005 Error Rate	FY2006 Error Rate	FY2007 Error Rate	FY2008 Error Rate
FY2004	4.4%	3.4%	3.2%	3.1%	3.0%
FY2005		1.0%	2.0%	1.1%	0.9%
FY2006			1.4%	0.5%	0.7%
FY2007				5.1%	5.9%
FY2008					10.3%
Overall	4.4%	3.1%	2.8%	2.8%	3.9%

Sources: Office of Management and Budget, *Improving the Accuracy and Integrity of Federal Payments*, January 8, 2009, p. 25. Office of Management and Budget, *Improving the Accuracy and Integrity of Federal Payments*, January 31, 2008, p. 43.

Fluctuations in cohort error rates reflect the uneven progress agencies have made in reducing error rates across programs and over time. While a majority of programs have a general downward trend in their error rates, many have had their error rates remain stagnant or even increase. In fact, a number of programs with over \$1 billion in annual improper payments in FY2009 have seen no improvement in their error rates after six years of improper payments reporting and remediation efforts.²⁷ The error rate for the Earned Income Tax Credit (EITC) increased from 24.5% in FY2004 to 25.5% in FY2009, for example, and the error rate for Supplemental Security Income (SSI) increased from 7.4% in FY2004 to 12.1% in FY2009.²⁸ In addition, the FY2009 error rates for two programs—Unemployment Insurance (10.3%) and Old

(...continued)

Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, hearings, 110th Cong., 1st sess, March 29, 2007, GAO-07-635T.

²⁷ Office of Management and Budget, *Improving the Accuracy and Integrity of Federal Payments*, January 8, 2009. Office of Management and Budget, *Improving the Accuracy and Integrity of Federal Payments*, January 31, 2008. Office of Management and Budget, *FY2009 Improper Payment Rates by Agency and Program*, November 17, 2009.

²⁸ Ibid.

Age, Survivors, and Disability Insurance (0.4%)—were unchanged from FY2004.²⁹ Taken as a group, these four programs issued at total of \$32.51 billion in improper payments in FY2009.³⁰

Error Rate Projections

OMB provides projections for program and cohort error rates in its FY2008 report. Specifically, OMB projects that the error rate for each of the cohorts between FY2004 and FY2007 will decline or remain stable in each of the next three fiscal years. This may be optimistic, given that only the FY2004 cohort has achieved similar progress in its error rate; the FY2005, FY2006, and FY2007 cohorts have each experienced a year when its error rate increased between fiscal years. OMB's projected error rates for individual programs have had varied accuracy. Some projections have been relatively accurate. In its FY2007 report, for example, OMB projected that Food Stamps would have an error rate of 5.8% and Medicare Fee-for-Service a 3.8% error rate the following year; the FY2008 reported figures were 5.6% and 3.6%, respectively. Other projections considerably underestimated or overestimated the reported rates. In its FY2007 report, OMB projected a 5.5% error rate for Supplemental Security Income for FY2008, for example, but the reported FY2008 rate of 10.7% more than doubled that estimate, and, consequently, SSI improper payments were \$2.3 billion higher than had been predicted. Conversely, OMB predicted a 4.6% error rate for the Public Housing/Rental Assistance program, while the reported FY2008 rate was only 3.5%, and the program's improper payments were \$338 million less than anticipated. OMB did not provide error rate projections as part of its FY2009 data.

Amount of Improper Payments

The data in **Table 1** show that improper payments for all measured programs totaled \$98.5 billion in FY2009. The dollar amount of the government's improper payments initially declined between FY2004 and FY2005, and then increased during each of the following three fiscal years. The initial decrease was the result of reductions in improper payments under Medicare. The increase in FY2006 was largely due to the \$1.57 billion jump in estimated improper payments under USDA's Marketing Loan Assistance Program.³¹ In FY2007, the amount of improper payments grew by \$1.4 billion, in large part due to the inclusion of several multi-billion dollar programs with double-digit error rates that were reported for the first time that year, including School Lunch and School Breakfast.³² In FY2008, improper payments increased by almost \$30 billion, much of which (\$28.9 billion) may be attributed to programs reporting for the first time that year.³³ In FY2009, the amount of improper payments reported increased by \$26 billion, with 26 programs reporting over \$100 million in improper payments.³⁴

²⁹ Ibid.

³⁰ Office of Management and Budget, *FY2009 Improper Payment Rates by Agency and Program*, November 17, 2009, pp. 2-3. The amount reflects FY2009 improper payments of \$12.250 billion for EITC, \$5.437 billion for SSI, \$12.283 billion for UI, and \$2.536 billion for OASDI.

³¹ OMB, *Improving the Accuracy and Integrity of Federal Payments*, January 31, 2007, p. ii.

³² OMB, *Improving the Accuracy and Integrity of Federal Payments*, January 31, 2008, p. 5.

³³ OMB, *Improving the Accuracy and Integrity of Federal Payments*, January 8, 2009, p. 4.

³⁴ OMB, Office of Management and Budget, *FY2009 Improper Payment Rates by Agency and Program*, November 17, 2009. Two programs administered by HHS, Temporary Aid for Needy Families (TANF) and State Children's Health Insurance Program (SCHIP), did not have error rates reported for FY2009 although they had reported in FY2008. According to HHS' FY2009 Performance and Accountability Report, HHS was reformulating the TANF error rate and (continued...)

That significant fluctuations in improper payments can be driven by a small number of programs is indicative of the concentrated nature of the problem. In FY2009, for example, 11 programs accounted for 94% of reported improper payments.³⁵ Citing similar statistics, OMB has argued that “Federal agencies can achieve the greatest return on investment for the taxpayer by ensuring improper payments are eliminated in the highest-risk programs (i.e. the 12 programs that comprise 90% of government-wide reported improper payment dollars).”³⁶ The IPIA, however, does not differentiate between “high-risk” and “highest-risk” programs, nor do its requirements vary by the size of a risk-susceptible program or the level of its improper payments. Rather, IPIA requirements must be fully implemented for all programs that are deemed high-risk and have more than \$10 million in annual improper payments.

Federal Outlays

The federal outlays data in **Table 1** represent the amount of risk-susceptible dollars for which federal agencies have developed improper payments estimates. In FY2008, agencies had estimates in place for approximately \$1.83 trillion out of \$1.89 trillion (97%) in total at-risk outlays. According to GAO, 10 risk-susceptible programs with outlays of approximately \$61 billion had no improper payments estimates in place for FY2008.³⁷ Until these programs have estimates, the full extent of the improper payments problem will remain unknown.

Improper Payment Causes

OMB has identified three primary causes of payment errors. Administrative and documentation errors occur when there is insufficient documentation to verify the accuracy of a claim, or when a clerical error is made during the inputting, classifying, or processing of applications or payments at the federal level. Authentication and medical necessity errors occur when the necessity of a medical procedure is incorrectly assessed, or when criteria for payment cannot be authenticated. Verification and local administration errors occur when recipient information cannot be verified, such as income or work status, and when state agencies or third parties make errors processing applications or payments. OMB’s analysis suggests that documentation errors are the most common cause of improper payments when programs are first measured, but are not as difficult to remediate as errors in verification and authentication.³⁸ OMB also suggests that administrative and documentation errors are the largest category of improper payments among state-administered programs—particularly Medicaid—while authentication and medical necessity errors are the largest category of improper payments for federally administered programs.

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was developing a final regulation for a new payment error rate methodology for the SCHIP program.

³⁵ OMB, *FY2009 Improper Payment Rates by Agency and Program*, November 17, 2009. The programs were Supplemental Nutrition Assistance Program, School Lunch, Medicare Fee-for-Service, Medicaid, Medicare Advantage (Part C), Public Housing and Rental Assistance, Unemployment Insurance, Earned Income Tax Credit, Highway Planning and Construction, Old Age, Survivors, and Disability Insurance, and Supplemental Security Income.

³⁶ OMB, *Improving the Accuracy and Integrity of Federal Payments*, January 31, 2008, p. 5. The 12 programs identified were Medicaid, Earned Income Tax Credit, Medicare Fee-for-Service, Medicare Advantage, Supplemental Security Income, Unemployment Insurance, Old Age, Survivors, and Disability Income, Food Stamps, Temporary Aid to Needy Families, School Lunch, Public Housing / Rental Assistance, and State Children’s Health Insurance Program.

³⁷ Government Accountability Office, *Improper Payments: Progress Made but Challenges Remain in Estimating and Reducing Improper Payments*, GAO-09-628T, April 22, 2009, p. 8.

³⁸ OMB, *Improving the Accuracy and Integrity of Federal Payments*, January 8, 2009, pp. 6-7.

Continuing Concerns

Reporting Threshold

There has been criticism of OMB's definition of "*significant* [emphasis added] improper payments." In addition to the \$10 million threshold in estimated improper spending established by the statute, OMB required that the improper payments represent at least 2.5% of total program payments. The Chairman and Ranking Minority Member of the House Subcommittee on Government Efficiency and Financial Management, Representative Todd Platts and Representative Marsha Blackburn, sent a letter to OMB in August 2003 questioning the 2.5% minimum threshold. Likewise, according to a news article, Senators Charles Grassley and Max Baucus, then the Chairman and Ranking Minority Member of the Senate Finance Committee, stated in a January 9, 2004, letter to then OMB Director Joshua Bolten that OMB should not have established the 2.5% threshold and should have simply required that agencies report all programs generating estimated improper payments of more than \$10 million. The Senators reportedly observed that, by adding the 2.5% threshold, "The improper payments figures that will eventually be reported to the public will look better and feel better than they really are...."³⁹

According to GAO, the 2.5% threshold could mask the extent of the improper payments problem. In a 2006 report reviewing agency PARs from FY2005, GAO identified many examples of agency programs with estimated improper payments over \$10 million that were not included in the agency's improper payments estimate because they did not meet the 2.5% threshold.⁴⁰ For example, GAO said that the Department of Education did not report on three programs that each had estimated improper payments exceeding \$10 million—\$155 million in total—because in each case those payments represented less than 2.5% of program outlays.⁴¹ If the 2.5% criterion were applied to large programs, GAO concluded, billions of dollars in improper payments could go unreported.⁴² OMB has defended the 2.5% threshold, stating it was established "to ensure that agencies were focusing their resources on programs with the highest levels of risk for improper payments."⁴³

As noted above, revised IPIA guidance, issued by OMB in 2006 as Appendix C to Circular A-123, addressed this issue to some extent. Language in the updated version stated explicitly that OMB could require a large program with relatively high annual outlays, but that failed to meet the 2.5% criteria, to be considered as high risk and included in the agency's annual IPIA reporting. Such a determination, however, would be done by OMB on a case-by-case, nonmandatory basis. The clarification in Appendix C, arguably, may be viewed as not going far enough by some in Congress who in the past have taken issue with OMB's addition of the 2.5% prerequisite.

³⁹ Cited by Amelia Gruber, "OMB Defends Actions on Improper Payments," *GovExec.com*, January 14, 2004.

⁴⁰ GAO, *Improper Payments: Agencies' Fiscal Year 2005 Reporting Under the Improper Payments Information Act Remains Incomplete*, GAO-07-92, December 2006, pp. 41-45.

⁴¹ *Ibid.*, p. 44.

⁴² *Ibid.*, p. 54.

⁴³ Letter from Linda Combs, OMB Controller, to McCoy Williams, GAO Director of Financial Management and Assurance, October 26, 2006.

Annual Review Exemption

As previously described, the IPIA requires agencies to review all their programs and activities each year to determine whether they are at risk for significant improper payments. OMB's 2006 revised guidance, however, permits agencies to exempt programs from the annual review requirement (which OMB refers to as a risk assessment) for two years if a program is determined not to be risk susceptible. Thus, if a program were reviewed in 2007 and deemed not at risk, then the program would not have to be reviewed again until 2010.⁴⁴ At a hearing on improper payments held in March 2007, McCoy Williams, Director of Financial Management and Assurance at GAO, testified that OMB had discussed the proposed changes with GAO prior to issuing the revised guidance. According to the witness, "We [at GAO] advised OMB that the provision to perform risk assessments every 3 years for those programs not deemed risk-susceptible was inconsistent with the IPIA requirement for agencies to review all programs and activities annually."⁴⁵

OMB's exemption from the IPIA's annual review requirement might exacerbate the consequences of inaccurate risk assessments. Agencies are still refining their procedures for identifying risk-susceptible programs. In some cases, improvements in risk assessment methods have resulted in programs being designated as risk susceptible that previously had been considered low-risk. The Department of Agriculture (USDA), for example, enhanced its risk assessment methodology in FY2006, and, as a consequence, it determined that four programs were susceptible to significant improper payments that year which had been considered low-risk the previous year.⁴⁶ USDA reported that those four programs had total outlays of \$12.8 billion and had issued a combined \$804 million in improper payments.⁴⁷ While OMB praised the agency for identifying "previously undetected" improper payments, USDA could have claimed OMB's annual review exemption for the four programs after determining they were low-risk in FY2005.⁴⁸ Had it done so, USDA would not have been required to re-assess those programs until FY2008, and hundreds of millions of dollars in improper payments might have gone undetected for another two years.

In addition, the exemption has been applied not just to individual programs, but, to entire agencies. In FY2007, for example, four agencies reported that they did not conduct new risk assessments, on the grounds that previous risk assessments had determined no new programs were risk-susceptible, and therefore they could claim OMB's three-year exemption for the entire agency.⁴⁹ In this way, agencies might use OMB guidance to declare themselves exempt from certain IPIA requirements.

⁴⁴ OMB's guidance would require a program to be re-assessed if it experienced a significant legislative change or a major increase in funding, even if that assessment would occur less than three years from the last risk assessment.

⁴⁵ Testimony of McCoy Williams, March 29, 2007, GAO-07-635T, p. 6.

⁴⁶ The four programs were Direct and Counter-Cyclical Payments, Conservation Reserve Program, Farm Service Agency (FSA) Disaster Programs, and the Non-insured Assistance Program. U.S. Department of Agriculture, "Improper Payment and Recovery Auditing Details," *FY2006 Performance and Accountability Report*, November 15, 2006, at <http://www.ocfo.usda.gov/usdarpt/pdf/par09.pdf>.

⁴⁷ *Ibid.*

⁴⁸ OMB, *Improving the Accuracy and Integrity of Federal Payments*, January 31, 2007, p. 4.

⁴⁹ Testimony of McCoy Williams, GAO Director of Financial Management and Assurance, *Improper Payments: Agencies' Efforts to Address Improper Payment and Recovery Auditing Requirements*, U.S. Congress, Senate Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, hearings, 110th Cong., 2nd sess., January 31, 2008, GAO-08-438T. The agencies were the General Services Administration, the Department of Health and Human Services (HHS), the Department of the Interior, and the National (continued...)

Agency Corrective Actions

Agencies are required to report on the steps that they are taking to reduce improper payments associated with their risk-susceptible programs. At least two agencies, DHS and HHS, were cited by agency auditors for failing to implement adequate corrective action plans in FY2008.⁵⁰ It is not known how many other agencies have deficient corrective action plans, because agency auditors are not required to assess IPIA implementation. As a consequence, GAO identified only four agencies where auditors reported on IPIA implementation: DHS, HHS, and the Departments of Defense and Transportation.⁵¹ Without independent assessments, such as those provided by GAO and agency IG audits, the status of agency implementation efforts cannot be firmly established. It is not known, for example, whether the lack of progress in reducing improper payments at some programs is a consequence of agencies failing to develop and implement corrective action plans for those programs.

Concerns of Program Integrity

Efforts to ensure that federal funds are spent wisely and thereby to prevent fraud, waste, and abuse, come under the rubric of program integrity. One might view improper payments as a component of program integrity.

To consider an example, with respect to Medicare, program integrity activities include “processes directed at reducing payment errors to Medicare providers, as well as activities to prevent, detect, investigate, and ultimately prosecute health care fraud and abuse.”⁵² The six main types of Medicare program integrity activities, carried out by contractors, include

1. auditing of cost reports submitted by Medicare Part A providers;
2. reviewing medical claims for necessity;
3. protecting benefit integrity by identifying and investigating fraud;
4. determining that Medicare pays only for services for which it is the primary (not secondary) payer;
5. educating providers regarding correct billing procedures; and
6. implementing the Medicare-Medicaid data matching program to uncover fraudulent activities affecting both programs.⁵³

Program integrity has garnered special notice recently in relation to the American Recovery and Reinvestment Act of 2009 (know as ARRA or the Recovery Act) , which was signed into law on February 17, 2009 (P.L. 111-5, 123 Stat. 115-521). AARA provides \$787 billion in stimulus

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Science Foundation.

⁵⁰ GAO, *Improper Payments: Progress Made but Challenges Remain in Estimating and Reducing Improper Payments*, GAO-09-628T, April 22, 2009, p. 9.

⁵¹ *Ibid.*, p. 8.

⁵² CRS Report RL34217, *Medicare Program Integrity: Activities to Protect Medicare from Payment Errors, Fraud, and Abuse*, by Holly Stockdale.

⁵³ *Ibid.*, pp. 4-7.

money for discretionary and mandatory spending, along with tax provisions. The Recovery Act contains many varied reporting requirements. “In implementing the Recovery Act,” President Obama noted in a memorandum to heads of executive agencies, “we have undertaken unprecedented efforts to ensure the responsible distribution of funds for the Act’s purposes and to provide public transparency and accountability of expenditures.”⁵⁴

OMB provided initial guidance to the agencies regarding implementation of the Recovery Act on February 18, 2009.⁵⁵ The OMB guidance instructs agencies “to take steps beyond standard practice, including reporting, information collection, budget execution, risk management, and specific actions related to award type.”⁵⁶ OMB issued updated implementing guidance on April 3, 2009.⁵⁷ An overview highlighting the most significant changes in the April update notes, “A section on program integrity (improper payments) has been added.”⁵⁸ Section 3.15 responds to a question about any actions, beyond standard practice, that agencies must take with respect to identifying, measuring, and recovering payments funded by appropriations in the Recovery Act. The OMB guidance advises agencies to continue using Appendix C, “Requirements for Effective Measurement and Remediation of Improper Payments,” from OMB Circular A-123. The April guidance continues,

Agencies may want to consider performing risk-based payment sampling as part of pre-payment reviews for Recovery Act funds. For example, risk based sampling could include targeting high risk vendors, grantees, or payment types where payments were identified as erroneous during agency audits, single audits, or recovery audits. For agencies that measure their programs and activities in arrears, such pre-payment (or earlier post payment) reviews may better inform agencies on errors that they may be able to prevent before disbursement.⁵⁹

Recovery and Payment Recapture Audits

In 2002, Congress included in Section 831 of the National Defense Authorization Act (P.L. 107-107) provisions requiring agencies to identify, and attempt to recover, overpayments to contractors. These provisions—commonly referred to as the Recovery Auditing Act—apply to agencies that enter into contracts valued at \$500 million or more in a fiscal year. Agencies are allowed to use recovered funds to offset the cost of recovery activities, including the use of private sector firms or other agencies. Any remaining recovered funds are to be credited back to the original appropriation, or deposited in the Treasury as miscellaneous receipts, if the appropriation is no longer available.

OMB’s guidance on recovery auditing requires agencies to establish policies and procedures (internal controls) that prevent, detect, and recover overpayments to contractors resulting from

⁵⁴ Presidential Documents, Administration of Barack Obama, “Responsible Spending of Funds” (Memorandum of March 20, 2009) 74 *Federal Register* 12531, March 25, 2009.

⁵⁵ OMB, *Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009*, memorandum for heads of departments and agencies from Peter R. Orszag, Director, M-09-10, February 19, 2009.

⁵⁶ *Ibid.*

⁵⁷ U.S. Executive Office of the President, Office of Management and Budget, *Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009*, memorandum for heads of departments and agencies from Peter R. Orszag, Director, M-09-15, April 3, 2009.

⁵⁸ *Ibid.*, p. 2. In the initial guidance, Section 3 was titled “Governance and Risk Management,” while in the April update, Section 3 is now titled “Governance, Risk Management, and Program Integrity.”

⁵⁹ *Ibid.*, p. 36.

payment errors.⁶⁰ OMB also requires agencies to report on their recovery auditing efforts in their PARs. In addition to data on the amount of contracts reviewed, the amount of improper payments identified, and the amounts recovered, agency reporting must include a description of recovery audit activities, a corrective action plan to address the root causes of payment error, and a description of any management improvement program carried out by the agency. OMB, in turn, includes data on agency recovery audit efforts in its annual IPIA report.

The data provided by OMB show that using recovery auditing procedures from FY2004 through FY 2008,⁶¹ federal agencies have recovered just slightly over half of the \$1.872 billion in improper payments identified for recovery. To put it another way, the government has yet to recover almost \$890 million in erroneous payments to contractors.⁶² The recovery rate varies widely among the agencies, ranging from a high of 100% at the Department of Commerce, to a low of 0.6% at the Department of Homeland Security (DHS). The low recovery rate at DHS is significant, as the department has only recovered \$3.1 million out of \$507.0 million in erroneous payments.⁶³ Moreover, GAO has raised concerns about the quality of recovery efforts to date at DHS, and has called for DHS management to increase its oversight and monitoring of recovery auditing efforts across the department.⁶⁴

The Department of Defense (DOD) reported a recovery rate of 70.0% for FY2004 through FY2008, but because of the prodigious value of its contracts, it has \$273.4 million in erroneous payments which it has not recovered.⁶⁵ Thus, DOD and DHS account for 87% of the \$890 million in erroneous payments to contractors that the government has identified, but not recovered.

The Departments of Health and Human Services (HHS) and Housing and Urban Development, along with the Environmental Protection Agency, no longer perform recovery audits “since they determined that due to the limited amount of improper contract payments identified, performing recovery audits was not cost effective.”⁶⁶

Under separate statutory authority, the Centers for Medicare and Medicaid Services let contracts for a recovery auditing demonstration project in the Medicare fee-for-service program from March 2005 to March 2008, which was run in California, New York, and Texas. The final evaluation of the pilot reported that the recovery audit contractors returned \$693.6 million in overpayments during the three years.⁶⁷ Meanwhile, provisions in the Tax Relief and Health Care Act of 2006 (P.L. 109-432, 120 Stat. 2922), signed into law December 20, 2006, established

⁶⁰ OMB, “Requirements for Effective Measurement and Remediation of Improper Payments,” Appendix C to OMB Circular A-123, August 10, 2006.

⁶¹ The most recent OMB compilation of recovery auditing data appeared in January 2009. To date an OMB report on *Improving the Accuracy and Integrity of Federal Payments* for 2010 (reflecting FY 2009 data), has not been issued.

⁶² OMB, *Improving the Accuracy and Integrity of Federal Payments*, January 8, 2009, p. 31.

⁶³ *Ibid.*, p. 29.

⁶⁴ GAO, *Department of Homeland Security: Challenges in Implementing the Improper Payments Information Act and Recovering Improper Payments*, GAO-07-013, September 2007, pp. 28-32, at <http://www.gao.gov/new.items/d07913.pdf>.

⁶⁵ OMB, *Improving the Accuracy and Integrity of Federal Payments*, January 8, 2009, p. 28.

⁶⁶ *Ibid.*, p. 32.

⁶⁷ A fact sheet, released by the White House press office in March 2010 regarding “Cutting Down on Waste and Fraud Through Payment Recapture Audits,” apparently included a revised figure of \$900 million recaptured in the Medicare pilot program. See <http://www.whitehouse.gov/the-press-office/president-obama-announces-new-effort-crack-down-waste-and-fraud>.

contracting for recovery auditing of Medicare on a permanent basis and called for its extension nationwide by 2010.⁶⁸

As discussed already, President Obama issued E.O. 13520, “Reducing Improper Payments,” in November 2009. The order focused primarily on three categories of action: boosting transparency, holding agencies accountable, and creating strong incentives for compliance. A White House memorandum to the heads of departments and agencies regarding “Finding and Recapturing Improper Payments” followed on March 10, 2010.⁶⁹ Once OMB guidance for implementation of this directive is issued, due by early June 2010 (within 90 days), agencies will be required to expand their existing use of incentive-based audit procedures.

While the March memo referred to the same definition for both recovery audits and payment recapture audits, the new policy constitutes a departure from the status quo. In the past, recovery auditing has helped to identify and reclaim overpayments to contractors. Only agencies handling more than \$500 million annually were included, however, with 20 of the 24 major agencies participating. Subsequently, Medicare Fee-for-Service program payments also were covered. Under the new policy, contract payments for all agencies will be eligible for recapture audit, along with grants and other forms of federal benefit payments made to state and local governments, banks, educational institutions, and non-profit organizations; for all of these types of payment programs, an agency will be able to pay for audits with recovered funds.

Beyond contributing to quantitative changes in the scope of federal contracts and benefit payments covered, payment recapture audits may lead to qualitative changes as well. For example, in a fact sheet accompanying the announcement of the President’s new effort to recover improper payments, payment recapture audits were characterized as “investigations in which specialized private sector auditors use cutting-edge technology and tools to scrutinize government payments and then find and reclaim taxpayer funds **made in error or gained through fraud**”(emphasis added).⁷⁰ The initial focus of recovery auditing in the federal government was on overpayments inadvertently made in error to contractors. With the pilot program extending coverage to a Medicare program and the March memo to assorted benefit payments, greater attention arguably is being directed to recovery of federal payments for fraudulent claims.

Congressional Oversight

The House Subcommittee on Government Efficiency and Financial Management held oversight hearings on improper payments in May and July 2003, as did the House Subcommittee on Government Management, Finance, and Accountability in July 2005 and April 2006.⁷¹ In the

⁶⁸For further discussion of this program, see CRS Report R40592, *Medicare’s Recovery Audit Contractor (RAC) Program: Background and Issues*, by Holly Stockdale

⁶⁹ Presidential Memorandum, ““Finding and Recapturing Improper Payments,”” 75 *Federal Register* 12119-12129, March 15, 2010.

⁷⁰White House, “Cutting Down on Waste and Fraud Through Payment Recapture Audits,” March 10, 2010, <http://www.whitehouse.gov/the-press-office/president-obama-announces-new-effort-crack-down-waste-and-fraud>.

⁷¹ U.S. Congress, House Committee on Government Reform, Subcommittee on Government Efficiency and Financial Management, *Show Me the Tax Dollars—How Much Is Lost to Improper Payments Each Year?*, hearing, 108th Cong., 1st sess., May 13, 2003 (Washington: GPO, 2003); and *ibid.*, *Show Me the Tax Dollars Part II—Improper Payments and the TennCare Program*, July 14, 2003 (Washington: GPO, 2003); and *ibid.*, Subcommittee on Government Management, Finance, and Accountability, *Implementing the Improper Payment Information Act - Are We Making Progress?* 109th Cong., 1st sess., July 20, 2005, at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=\(continued...\)](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=(continued...))

Senate, the Subcommittee on Federal Financial Management, Government Information, and International Security held improper payments hearings in July 2005, and in March and December 2006.⁷²

Developments in the 110th Congress

On March 29, 2007, the Senate Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, reformulated after the 2006 elections, held a hearing titled “Eliminating and Recovering Improper Payments.”⁷³ In addition to testimony from McCoy Williams of GAO, referred to above, three other witnesses appeared at the hearing.⁷⁴ On January 31, 2008, the subcommittee held another hearing focused on “Eliminating Agency Payment Errors.” McCoy Williams again appeared for GAO, and Daniel Werfel, Acting Controller, testified for OMB.⁷⁵

Mr. Williams indicated that his testimony was based on a GAO report sent to the subcommittee the previous week,⁷⁶ and that, despite the improvements to date, challenges continue with respect to IPIA implementation. Mr. Williams outlined five specific problems. One issue is the comprehensiveness of agencies’ risk assessments. Despite the IPIA requirement for an annual review of all agency programs that may be susceptible to significant improper payments, the review of 2007 PARs by GAO indicated that not all agencies reported conducting risk assessments. Some agencies reported that they did not conduct a risk assessment of all their programs, since “OMB guidance allows agency programs deemed not risk-susceptible to conduct a risk assessment generally every three years.”⁷⁷

A second problem, according to GAO, relates to the inclusiveness of improper payment estimates. GAO found that estimates have not been developed for all of the programs identified as risk-susceptible for improper payments. The \$55 billion improper payment estimate for FY2007 did not cover 14 programs with FY2007 outlays totaling approximately \$170 billion. A third challenge cited by GAO involves IPIA noncompliance issues. A few auditors reported on IPIA compliance problems as a part of their audits of an agency’s FY2007 financial statements. According to GAO, these noncompliance issues “related to the key requirements of the act, including risk assessments, sampling methodologies, implementing corrective actions, recovering

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109_house_hearings&docid=f:26655.pdf; and *ibid.*, *The Improper Payments Information Act—Are Agencies Meeting the Requirements of the Law?*, April 5, 2006.

⁷² Medicare is comprised of a fee-for-service component (Parts A and B), a managed care component (Part C), and a prescription drug benefit component (Part D).

⁷³ Testimony of McCoy Williams, GAO Director of Financial Management and Assurance, *Improper Payments: Agencies’ Efforts to Address Improper Payment and Recovery Auditing Requirements Continue*, U.S. Congress, Senate Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, hearings, 110th Cong., 1st sess, March 29, 2007, GAO-07-635T.

⁷⁴ OMB, *Improving the Accuracy and Integrity of Federal Payments*, January 31, 2008, p. ii, at http://www.whitehouse.gov/omb/financial/reports/2008_ipia_report.pdf.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.* The nine programs that accounted for 90.2% of FY2007 reported improper payments were Medicare Fee-for-Service, Medicaid Fee-for-Service, Earned Income Tax Credit, Unemployment Insurance, Supplemental Security Income, Food Stamps, Public Housing/Rental Assistance, National School Lunch, and Old-Age, Survivors, and Disability Insurance.

⁷⁷ OMB, *Improving the Accuracy and Integrity of Federal Payments*, January 31, 2008.

improper payments, and inadequate documentation.”⁷⁸ Another omission in some of the agency reports involved the absence of discussion on possible statutory or regulatory barriers impeding agencies’ ability to reduce improper payments. The fifth problem relates to management challenges in the design or implementation of necessary internal controls, which are critical in efforts to identify improper payments and prevent them in the future.

Daniel Werfel, then OMB’s Acting Controller, also testified at this 2008 Senate subcommittee hearing.⁷⁹ He noted three important trends in the IPIA data from FY2004 through FY2007. First, agencies are expanding the universe of high-risk programs that are measured each year. Second, agencies are moving forward toward “closing all reporting gaps so that the full extent of government-wide improper payments” will be known within a few years. Third, after an agency “has identified and reported payment errors, it is able to implement corrective actions and reduce those errors in subsequent years.” Mr. Werfel, in reviewing these trends, stated that after four years of IPIA implementation, “agencies generally have the tools in place to ensure that all high risk activities are identified and measured.” Agencies do not, however, “currently have the full complement of tools they need” to eliminate improper payments.⁸⁰

Mr. Werfel then suggested three strategies to address this deficiency. First, maximize the impact of program integrity dollars. In other words, concentrate efforts on the higher risk, larger dollar amount programs; nine programs account for 90% of the FY2007 government-wide improper payment total. Second, address challenges in eligibility verification. Such errors accounted for about 80% of total improper payment errors in FY2007. Third, Mr. Werfel supported enactment of specific program reforms recommended by the Administration, most recently being re-proposed in the President’s FY2009 budget.⁸¹

There was no oversight hearing focused exclusively on the IPIA in the House during the 110th Congress. On June 3, 2008, however, the Subcommittee on Government Management, Organization, and Procurement, held a hearing titled “Oversight of Federal Financial Management.”⁸² Testimony provided by OMB reviewed the status of financial reporting government-wide, as well as at the agency level. Mr. Werfel then referred to other improvement initiatives, including reducing improper payments. He praised Congress for taking a step toward enacting some reforms supported by OMB, “including discretionary funding (above the cap) for activities with a proven track record of reducing error and generating program savings” in the FY2009 budget resolution (S.Con.Res. 70).⁸³

On the same day as the Senate hearing mentioned above, Senator Tom Carper, chairman of the subcommittee, introduced S. 2583, the Improper Payments Elimination and Recovery Act of 2008.⁸⁴ On July 30, 2008, the Senate Committee on Homeland Security and Governmental

⁷⁸ Cited by Amelia Gruber, “OMB Defends Actions on Improper Payments,” *GovExec.com*, January 14, 2004.

⁷⁹ Werfel was nominated to be OMB Controller on August 3, 2009, and was approved by the Senate Committee on Homeland Security and Government Affairs on September 29, 2009. He must be confirmed by the full Senate.

⁸⁰ GAO, *Improper Payments: Agencies’ Fiscal Year 2005 Reporting Under the Improper Payments Information Act Remains Incomplete*, GAO-07-92, December 2006, pp. 41-45.

⁸¹ *Ibid.*, p. 44.

⁸² *Ibid.*, p. 54.

⁸³ Letter from Linda Combs, OMB Controller, to McCoy Williams, GAO Director of Financial Management and Assurance, October 26, 2006.

⁸⁴ OMB’s guidance would require a program to be re-assessed if it experienced a significant legislative change or a major increase in funding, even if that assessment would occur less than three years from the last risk assessment.

Affairs by voice vote ordered that S. 2583, with an amendment in the nature of a substitute, be reported favorably.

S. 2583, as reported, would have amended the IPIA to expand and strengthen ongoing efforts to identify, reduce, and recover improper payments due the federal government. For example, the threshold for agency heads to identify programs as “susceptible to significant improper payments” would have been broadened, creating the likelihood that more agencies would have to report on additional programs, while the floor for program expenditures subject to recovery auditing would have been lowered. Expanded reporting requirements regarding corrective action to be taken would have been placed on the agencies and OMB. Agency inspectors general would have been newly tasked with the responsibility of preparing annual compliance reports, and these would have been included with the annual financial statements. A time-tiered approach for remediation of an agency’s noncompliance status would have been established, ranging from submission of a corrective action plan to Congress to mandatory submission of reauthorization proposals, which, if not approved by Congress, would have triggered a freeze in level of authorizations. S. 2583 as reported also would have allowed the OMB director to establish pilot programs on compliance enforcement to test potential accountability mechanisms along with incentives or penalties to ensure statutory compliance with law and, ultimately, elimination of improper payments. In the House, a companion bill, H.R. 5467, was introduced on February 14, 2008, but no further action occurred.

Developments in the 111th Congress

In the 111th Congress, two floor amendments relevant to reducing improper payments have been approved in the Senate. In January 2009 during floor consideration of H.R. 2, the State Children’s Health Insurance Program (SCHIP) reauthorization bill, Senator Coburn offered S.Amdt. 50. The amendment provided that the final rule implementing the payment error rate measurement (PERM) requirements contained elsewhere in the bill is required to be made within six months of enactment of the SCHIP reauthorization. Absent the amendment, according to Senator Coburn, there would be no deadline for issuance of the final PERM rule, a prerequisite to calculating or publishing national or state-specific rates based on PERM.⁸⁵ The Senate agreed to S.Amdt. 50 by voice vote.⁸⁶

In April 2009 Senator Carper offered an amendment to S.Con.Res. 13, the Congressional Budget Resolution for FY2010. The purpose of S.Amdt. 764 was establishment of a deficit-reduction reserve fund for the elimination and recovery of improper payments. The amendment was combined with others into the draft managers’ package No.1, which was considered and adopted en bloc by unanimous consent.⁸⁷ The Carper amendment was not retained in the conference version of S.Con.Res. 13, as approved by both chambers.⁸⁸

⁸⁵ Sen. Tom Coburn, “H.R. 2, the State Children’s Health Insurance Program reauthorization,” Senate debate, *Congressional Record*, daily edition, vol. 155 (January 28, 2009), p. S987.

⁸⁶ *Ibid.*, *Congressional Record*, daily edition, January 29, 2009, p. S1044.

⁸⁷ Sen. Tom Carper, “Consideration of S.Con.Res. 13,” Senate debate, *Congressional Record*, daily edition, vol. 155 (April 2, 2009), p. S. 4262.

⁸⁸ The Senate-passed version provided for 53 reserve funds, whereas the conference version retained a total of 34 reserve funds, 20 for the Senate and 14 for the House. See U.S. Congress, Joint Committee of Conference, *Concurrent Resolution on the Budget for Fiscal Year 2010*, Conference Report to accompany S.Con.Res. 13, 111th Cong., 1st sess., April 27, 2009, H.Rept. 111-89.

Reserve fund provisions, such as those in the Carper amendment, authorize the chairs of the House and Senate Budget Committees to adjust committee spending allocations, provided certain conditions are met. Usually the necessary circumstances entail “legislation dealing with a particular policy being reported by the appropriate committee or an amendment dealing with the policy being offered on the floor.” Should the stipulated action occur, the “Budget Committee chairman submits the adjustment to the respective chamber.”⁸⁹

On April 22, 2009, the Senate Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security held a hearing on “Eliminating Waste and Fraud in Medicare and Medicaid.” In FY2008 these two programs accounted for nearly half of all reported improper payments. The subcommittee heard from four witnesses, representing GAO, Centers for Medicare and Medicaid Services, Office of Inspector General for HHS, and Medicaid Inspector General for New York.⁹⁰

The House Subcommittee on Government Management, Organization, and Procurement had a hearing on “Oversight of Federal Management” on July 8, 2009. The six witnesses at the hearing included a Congressman; officials from GAO, the Department of the Treasury, DHS, and NASA; and a fellow from the Heritage Foundation.⁹¹ The subcommittee held a similarly titled hearing on April 14, 2010, which focused primarily on a review of GAO’s attempt to audit the federal government’s FY2009 consolidated financial statements. Witnesses included officials from GAO, OMB, the Department of Treasury, Department of State, and Department of Defense. A second panel contained a staffer from the Texas Legislative Budget Board and two witnesses from the private sector.⁹²

On July 23, 2009, Senator Carper along with four bipartisan cosponsors introduced S. 1508, the Improper Payments Elimination and Recovery Act of 2009 (IPERA), a bill similar to S. 2583 as reported in the 110th Congress. On July 29, the bill, as amended, was ordered reported favorably by the full committee. On the same day as the committee’s business meeting, a companion measure, H.R. 3393, was introduced by Representative Patrick Murphy, with Representative Bilbray as a cosponsor, and referred to the House Committee on Government Oversight and Reform.

President Obama affirmed his support for the IPERA in remarks given on March 10, 2010. He stated, in part: “And I’m announcing my support for the Improper Payments Elimination and Recovery Act—that’s a mouthful—... but this is a bipartisan bill to expand our ability to do these [payment recapture audits], so that we can prevent even more fraud and abuse, and waste.”⁹³

⁸⁹ CRS Report R40559, *S.Con.Res. 13: The Budget Resolution for FY2010*, by Megan Suzanne Lynch and Mindy R. Levit.

⁹⁰ For statements, see <http://hsgac.senate.gov/public/index.cfm?Fuseaction=Hearings.Detail&HearingID=4f74889e-811e-425d-b871-8536f3d0c791>.

⁹¹ For links to the statements, see <http://governmentmanagement.oversight.house.gov/story.asp?ID=2498>.

⁹² For links to the statements, see http://oversight.house.gov/index.php?option=com_content&task=view&id=4873&Itemid=28.

⁹³ Barack Obama, “Remarks by the President on Health Insurance Reform in St. Charles, MO, March 10, 2010, White House Press Office, available at <http://www.whitehouse.gov/the-press-office/remarks-president-health-insurance-reform-st-charles-mo>. At this time, there were five cosponsors to Senator Carper’s bill (Senators Coburn, Collins, Lieberman, McCain, and McCaskill), including three Republicans and two Democrats.

On April 28, 2010, Representative Townes, chairman of the House Committee on Oversight and Government Reform, moved to suspend the rules and pass H.R. 3393, as amended.⁹⁴ Representative Issa, the ranking minority member, also spoke in favor of H.R. 3393 and commented on the bill's bipartisan support. Following floor debate, the House approved the bill by voice vote.⁹⁵

On April 28, 2010, President Obama issued a statement commending the House for passage of H.R. 3393. He noted that the measure supports goals found in E.O. 13520, "to curb improper payments by boosting transparency, holding agencies accountable, and creating strong incentives for compliance," and in his directive of March 10, 2010, instructing agencies "to launch tough audits to recover some of the money lost to improper payments last year." The statement concluded, "I hope that the Senate will take swift action to send a bill to my desk as soon as possible."⁹⁶

Legislation in the 111th Congress

Companion bills, S. 1508 and H.R. 3393, known as the Improper Payments Elimination and Recovery Act of 2010 (IPERA), were introduced, respectively, on July 23 and July 29, 2009. The Senate Committee on Homeland Security and Governmental Affairs on July 29, 2009, voted to report S. 1508 as amended favorably. On April 28, 2010, the House passed H.R. 3393 as amended by voice vote. Major provisions in the IPERA bills as introduced included the following:

- Amends the IPIA of 2002 to require the head of each federal agency to review agency programs and activities every three fiscal years and identify those that may be susceptible to significant improper payments. Defines "significant" to mean improper payments in program or activity payments in the preceding fiscal year that may have exceeded either \$10 million and 2.5% of program outlays (1.5% prior to FY2013) or \$100 million.
- Sets forth risk factors for conducting improper payment reviews, including: (1) whether the program or activity is new to the agency; (2) the volume of payments made; (3) whether payment decisions are made outside of the agency; (4) recent major changes in program funding, authorities, practices, or procedures; (5) the level and quality of personnel training; and (6) significant deficiencies in auditing practices.
- Requires agency heads to produce statistically valid estimates of the improper payments in their agencies and to include such estimates in their annual financial statements. Requires agency heads to conduct recovery audits for agency programs that expend \$1 million or more annually if such audits would be cost-

⁹⁴ A measure need not have been reported by the committee of referral before being brought to the floor under suspension. For further discussion of this procedure, see CRS Report 98-314, *Suspension of the Rules in the House: Principal Features*, by Elizabeth Rybicki.

⁹⁵ "Improper Payments Elimination and Recovery Act," House debate, *Congressional Record*, daily edition, vol. 156 (May 28, 2010), pp. H2942-H2947.

⁹⁶ "Statement by the President on Passage of the Improper Payments Elimination and Recovery Act in the House of Representatives," April 28, 2010, available at <http://www.whitehouse.gov/the-press-office/statement-president-passage-improper-payments-elimination-and-recovery-act-house-re>.

- effective. Expands agency reporting requirements to require reports on actions to reduce and recover improper payments
- Requires the Director of OMB to report to specified congressional committees and the Comptroller General in each fiscal year on actions agencies have taken to report on and recover improper payments; and to provide guidance to agencies for implementing actions to reduce improper payments and strategies for addressing risks and establishing internal controls. Requires each agency's Inspector General to report each fiscal year on agency compliance with this Act. Authorizes the Director of OMB to establish one or more pilot programs to test accountability mechanisms to ensure compliance with this Act and eliminate improper payments.

H.R. 3393 as amended and passed by the House on April 28, 2010, included some new substantive provisions not found in the bill as introduced. For example, a new subsection expanded upon the original provisions regarding the disposition of amounts collected through recovery audits back to an appropriations account or to the Treasury as miscellaneous receipts. Another new subsection strengthened privacy protections, by restricting the disclosure of information obtained by nongovernmental entities during recovery audit activities that directly identifies an individual or could reasonably be used to do so.⁹⁷

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⁹⁷ H.R. 3393, as passed by the House on April 28, 2010, p.18 (§ 2(h)(3)(c)(iii)), and pp.20-21 (§ 2(h)(5)), available electronically at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3393eh.txt.pdf.