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IMPROPER PAYMENTS ELIMINATION AND RECOVERY ACT (IPERA)

Top 10 Things Agencies Need to Know

Eliminating improper payments has been a key objective of the federal government for the past nine years, beginning with the issuance of the *Improper Payments Information Act of 2002 (IPIA)* and the *Recovery Auditing Act*, also issued in 2002. The Office of Management and Budget (OMB) has provided guidance to assist agencies with implementing these laws—*OMB Circular A-123, Appendix C*—and has monitored progress during this time. Despite the requirements, guidance, and efforts that agencies have put forth to address improper payments, this remains a sizeable challenge, with an estimated $125 billion in improper payments reported for fiscal year (FY) 2010.* Given the current state of the federal government's budget and debt, this is a problem that must be addressed—in fact, the taxpayers are demanding it.

On July 22, 2010, President Obama signed into law the *Improper Payments Elimination and Recovery Act (IPERA)*, for which the OMB issued implementation guidance in M-11-16, thus replacing *OMB Circular A-123, Appendix C*. The new law and guidance provide an increased focus on the issue of improper payments, and contain new and modified requirements that agencies must implement.

To help agencies understand the new requirements and what they mean for internal control programs, MorganFranklin prepared a summary of the top 10 key changes from the *IPIA* and *Recovery Auditing Act* to the new *IPERA* guidance.

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MorganFranklin personnel have extensive experience with *IPIA* and *Recovery Auditing Act* activities, as well as hands-on experience implementing the new *IPERA* guidance. Our professionals have developed risk assessment and cost-effectiveness methodologies, and have supported organizations in performing recapture audits and statistical testing for *IPIA*. We welcome the opportunity to discuss the challenges agencies are facing with *IPERA* and can provide the guidance, expertise, and extra hands needed to tackle this high-stakes challenge. Visit us online at **www.morganfranklin.com**.

*According to OMB Memorandum M-11-16 issued on April 14, 2011, on "Issuance of Revised Parts I and II to Appendix C of *OMB Circular A-123*."

Do intragovernmental transactions and payments to employees require review?

IPERA clearly excludes these types of payments from *IPIA* statistical sampling and recapture (previously recovery) audit activities. Therefore, agencies are not required to assess payments such as payroll, travel, and intragovernmental.

What is a program or activity with "significant improper payments" that would require statistical testing?

Note that "significant improper payments" has been redefined. Previously, the term was defined as gross annual improper payments exceeding both 2.5% of program outlays and $10 million. Now agencies are required to measure improper payments even if they do not exceed 2.5%, but are estimated to exceed $100 million. In addition, in FY 2013, the 2.5% threshold will be reduced to 1.5%.

When are risk assessments required?

IPERA requires that in FY 2011, agencies "rebaseline" their risk assessments for all programs and activities to identify those susceptible to significant improper payments—and repeat the process at least every three years thereafter if deemed not risk susceptible. Agencies may request waivers for the FY 2011 rebaseline. If a program has already been deemed susceptible to significant improper payments and the agency is performing a statistical measurement, then it is not required to conduct a risk assessment.

Are there innovative ways to prevent, detect, and recapture improper payments?

IPERA provides a summary of proven approaches to consider, including predictive modeling, forensic accounting tools, data matches, due diligence, and risk oversight, in order to focus verification activities based on cost-effectiveness and financial incentives. This is not a finite list, but rather the OMB allows innovation and creativity in devising the most efficient and effective ways to solve the problem. Best practices from the *American Recovery and Reinvestment Act (ARRA)*, as well as reference to the Government Accountability Office's (GAO) *Strategies to Manage Improper Payments: Learning from Public and Private Sector Organizations*, are also included in *IPERA*.

When is a recapture audit required?

Previously, the *Recovery Auditing Act* required that contracts with a total value of more than $500 million in one fiscal year undergo a recovery audit (now referred to as a recapture audit). *IPERA* now requires that all programs and activities that expend more than $1 million in a fiscal year be subject to a recapture audit, if cost-effective. This is a very significant change, requiring agencies to determine what it means to be cost-effective. Meanwhile, "all programs and activities" expands this requirement from the previous focus of contracts only to now include grant, benefit, and loan payments as well.

Are targets required for recapture audit programs?

IPERA requires that targets be set annually to drive performance. Agencies may set those targets, however, they should strive to reach 85% by FY 2013. FY 2011 and FY 2012 targets are left to the discretion of agencies, but will need to be communicated to the OMB for approval.

How can agencies determine cost-effectiveness?

IPERA provides examples to consider when determining how much in overpayments may be recovered, and whether the cost to recover those overpayments would exceed the recovered amounts. Agencies must develop and implement a cost-effectiveness assessment to document their rationale for determining whether a recapture audit is required for each program or activity that expends more than $1 million in funding in a fiscal year.

What can agencies do with recovered funds?

IPERA has expanded the opportunity for agencies to use expired, recovered discretionary funds appropriated subsequent to the issuance of *IPERA*. After reimbursement of actual expenses incurred by the agency to administer the program of recapture auditing (including costs of contractors), these funds may be used for a financial management improvement program (up to 25%), its original purpose (up to 25%), and inspector general related activities (up to 5%). The remainder of funds would be returned to the Department of the Treasury. Specific guidance is outlined in *IPERA*, but it should be noted that there is expanded incentive for CFOs, programs, and the inspector general to support effective recapture audit programs.

Is an annual report required for recapture audits?

Yes, in fact there are two reporting requirements. First, each agency is required to report annually on payment recapture audit programs in its Performance and Accountability Report (PAR) and Agency Financial Report (AFR). In addition, a separate report to Congress and the OMB must be submitted on November 1. Details of the required content of these reports are outlined in *IPERA*.

How will *IPERA* compliance be monitored and enforced?

The inspector general is required to review programs to determine if agencies are compliant. *IPERA* has noted, among other criteria, that if a program or activity has a gross improper payment rate of greater than 10%, agencies may be deemed noncompliant. If deemed noncompliant, there are a number of potentially burdensome reporting requirements to Congress related to the activities that agencies will undertake to become compliant. If deemed noncompliant for two years, the OMB will become very hands-on in intensifying compliance efforts, and dedicated funding will be required. If noncompliant for three years, the program or activity may be at risk of losing authorization and funding. Although silent in the guidance, the *IPERA* law outlines the possibility of a required "opinion on internal control over improper payments" if agencies are noncompliant. Guidance is expected to be forthcoming on this topic.

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