

Improper Payments Elimination and Recovery Act Passed

The Improper Payments Elimination and Recovery Act (IPERA), which was passed unanimously in both houses and signed into law on July 22, 2010, is targeted at reducing wasteful spending by identifying government programs that are susceptible to significant improper payments and requiring that corrective plans be implemented to alleviate the waste.

IPERA is projected to eliminate \$50 billion in wasteful spending by 2012 by amending the Improper Payments Information Act of 2002 (IPIA) and expanding current government program auditing processes to better identify programs that are susceptible to improper payments.¹ Improper payments are those which are “made in the wrong amount, to the wrong person, or for the wrong reason.”¹ These types of payments totaled nearly \$110 billion in 2009 alone, with government reports indicating that over the last three years, more than \$180 million was paid to deceased Americans, in addition to the \$230 million paid to felons (who are ineligible for benefits).¹

The legislation calls for agencies to perform annual risk assessment audits on its various programs, and if a program is deemed susceptible to “significant” improper payments, those payments must be measured.¹ Significant improper payments are defined as improper payments exceeding “\$100 million or \$10 million of all program and activity payments and 2.5% of program outlays” for the preceding fiscal year and “\$100 million or \$10 million of all program and activity payments and 2.5% of program outlays” for years prior to FY2013.¹ Additionally, IPERA requires an audit of all programs and activities, not just contracts, as was previously required.¹ All funds recovered by agencies through this process may be used by those agencies “to improve their financial management, to support the agency’s Office of Inspector General, [or] for the original intent of the funding,” among other things.¹

Government agencies will be required to complete this yearly review on programs that spend at least \$1 million annually “if such audits would be cost effective.”¹ In conducting these reviews, agencies should consider several risk factors, including: “(1) whether the program or activity reviews is new to the agency; (2) the complexity of the program or activity; (3) the volume of payments made; (4) whether payment or payment

eligibility decisions are made outside of the agency; (5) recent major changes in program funding, authorities, practices, or procedures; (6) the level, experience, and quality of personnel training; and (7) significant deficiencies in auditing practices.”¹ Agencies that are noncompliant with this system will face various penalties depending on the amount of time spent in noncompliance, including such remedial efforts as establishing a compliance plan to being required to set aside funds specifically for compliance efforts.¹

It should be noted that the recent modifications by the Centers for Medicare and Medicaid Services (CMS) to methods of accounting for improper payments are separate from this new legislation.¹ The effect that the IPERA will have on Medicare and the cost to conduct these reviews has also not, as of yet, been determined. However, according to the requirements set forth above, it is likely that Medicare will be among those identified as being susceptible to significant improper payments. While the IPERA permits for pilot tests to be performed to assess the plausibility of compliance with the program,¹ it is unclear if any such test has been commenced by CMS, or any other government agency.

¹ “Obama signs bill to curb payout waste: Fraud, mistakes cost federal agencies \$110 billion in 2009,” Kara Rowland, The Washington Times, July, 22, 2010, <http://www.washingtontimes.com/news/2010/jul/22/obama-signs-bill-to-curb-payout-waste/> (Accessed July 23, 2010); “Bill Summary & Status,” The Library of Congress, THOMAS, April 29, 2010, <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR03393:@@L&summ2=m&> (Accessed July 29, 2010).

² “President Obama to Sign Improper Payments Elimination and Recovery Act,” Office of the Press Secretary, The White House, July 22, 2010, <http://www.whitehouse.gov/the-press-office/president-obama-sign-improper-payments-elimination-and-recovery-act> (Accessed July 29, 2010).

³ “President Obama to Sign Improper Payments Elimination and Recovery Act,” Office of the Press Secretary, The White House, July 22, 2010, <http://www.whitehouse.gov/the-press-office/president-obama-sign-improper-payments-elimination-and-recovery-act> (Accessed July 29, 2010).

⁴ “President Obama to Sign Improper Payments Elimination and Recovery Act,” Office of the Press Secretary, The White House, July 22, 2010, <http://www.whitehouse.gov/the-press-office/president-obama-sign-improper-payments-elimination-and-recovery-act> (Accessed July 29, 2010).

⁵ “Bill Summary & Status,” The Library of Congress, THOMAS, April 29, 2010, <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR03393:@@L&summ2=m&> (Accessed July 29, 2010).

(Continued from previous page)

- ⁶ “President Obama to Sign Improper Payments Elimination and Recovery Act,” Office of the Press Secretary, The White House, July 22, 2010, <http://www.whitehouse.gov/the-press-office/president-obama-sign-improper-payments-elimination-and-recovery-act> (Accessed July 29, 2010).
- ⁷ “President Obama to Sign Improper Payments Elimination and Recovery Act,” Office of the Press Secretary, The White House, July 22, 2010, <http://www.whitehouse.gov/the-press-office/president-obama-sign-improper-payments-elimination-and-recovery-act> (Accessed July 29, 2010).
- ⁸ “Bill Summary & Status,” The Library of Congress, THOMAS, April 29, 2010, <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR03393:@@L&summ2=m&> (Accessed July 29, 2010).
- ⁹ “Bill Summary & Status,” The Library of Congress, THOMAS, April 29, 2010, <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR03393:@@L&summ2=m&> (Accessed July 29, 2010).

- ¹⁰ “The Improper Payments Elimination and Recovery Act of 2010,” http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s1508enr.txt.pdf (Accessed July 29, 2010), p. 10.
- ¹² “Improper Medicare FFS Payments Report November 2009: Executive Summary,” Centers for Medicare and Medicaid Services, November 2009, http://www.cms.gov/CERT/Downloads/CERT_Report.pdf (Accessed July 29, 2010), p. 1, 5.
- ¹³ “The Improper Payments Elimination and Recovery Act of 2010,” http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s1508enr.txt.pdf (Accessed July 29, 2010), p. 10.



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