



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 18 2012

MEMORANDUM

SUBJECT: Response to the Office of Inspector General's Audit: "EPA Can Improve Its Improper Payments Program" Report No. 12-P-0311, dated March 1, 2012

FROM: Barbara J. Bennett
Chief Financial Officer

for Craig E. Hooks, Assistant Administrator
Office of Administration and Resources Management

TO: Arthur A. Elkins, Jr.
Inspector General

Thank you for the opportunity to respond to the findings and recommendations in the subject audit report. Attention to these issues should further strengthen the agency's fiscal integrity. Attached is our Corrective Action Plan in response to the specific report recommendations. We continue to disagree with the recommendation that the Office of the Chief Financial Officer report discounts not taken as improper payments under the Improper Payments Elimination and Recovery Act starting with FY 2012 Agency Financial Report unless clarification from the Office of Management and Budget states otherwise. We believe the Office of Inspector General interpretation of improper payments related to discounts is overly broad given existing laws and other OMB payment guidance.

If you have any questions concerning the audit response, please contact Stefan Silzer, Director, Office of Financial Management at (202) 564-5389 or Steve Erickson of the Financial Policy and Planning Staff at (202) 564-1780.

Attachments (2)

cc: Nanci Gelb
Maryann Froehlich
Joshua Baylson
Stefan Silzer
Jeanne Conklin
Raffael Stein
Melvin Visnick
Janice Kern
Douglas Barrett
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OCFO's Response to OIG Audit

"EPA Can Improve Its Improper Payments Program"

Report No. 12-P-0311, dated March 1, 2012

Rec. No.	OIG Recommendation	Action Official(s)	Proposed Action	Proposed Completion Date
1.1	Issue guidance requiring that the results of all grant improper payment determinations and recaptures be documented in the compliance database and reported in the FY 2012 AFR.	OARM	The EPA concurs with this recommendation. The guidance was posted internally at http://intranet.epa.gov/ogd/policy/ogd_interim_guidance_ipera_4_19_12.pdf .	Completed 4/19/2012
1.2	Continue to track in the Management Audit Tracking System the recommendation in OIG Report No. 11-P-0362—to include in the AFR all improper payments identified through EPA reviews and OIG financial and single audits—until the corrective actions are completed.	OCFO, OARM	The EPA concurs with this recommendation. OCFO re-opened corrective actions 1.2 and 1.3 from OIG Report No. 11-P-0362. Recommendations will remain open until the corrective actions are completed. Questioned costs determined to be improper payments that are identified through OIG audits and state Single Audit reports will be reported in the 2012 AFR.	11/15/2012
2.1	Report discounts not taken as improper payments under IPERA, starting with the FY 2012 AFR, unless clarification from the OMB states otherwise.	OCFO	OCFO respectfully disagrees with this recommendation. Specific reasons are outlined below. The agency will provide narrative update of its discounts process in the FY 2012 AFR. OCFO is committed to tracking reasons and dollars in its financial systems, and will report those missed discounts deemed as improper in the FY 2013 AFR.	11/15/2013
3.1	Issue guidance to program offices to ensure the quality of reported improper payment and recaptured payment information.	OCFO	EPA concurs with this recommendation. The guidance is available internally at http://intranet.epa.gov/ocfo/management_integrity/improper_payments.htm .	Completed 4/6/2012

Response to Recommendation 2.1

The EPA continues to disagree with the OIG recommendation 2.1: report discounts not taken as improper payments under IPERA, starting with the FY 2012 AFR, unless clarification from the OMB states otherwise. We believe the OIG's interpretation of improper payments related to discounts is overly broad given existing laws and other OMB guidance. We will report discounts not taken as improper payments when it was both advantageous and within the agency's control to take the discount, yet the agency failed to take the discount.

The agency outlined its reasons for disagreement in its February 9, 2012 response to the OIG draft report, which we have included as Attachment 2. The OIG acknowledged the EPA's position and agreed that there are some cases where it may not be advantageous to take a discount if it compromises internal controls. However, the OIG did not change the recommendation based upon the broad definition of an improper payment in IPERA law.¹

The EPA continues to maintain that the IPERA definition of improper payments only applies to "applicable" discounts. The word "applicable" requires some discernment. The intent of IPERA is to "prevent the loss of billions in taxpayer dollars," and we believe that this intent is essential in determining what constitutes an "applicable" discount.² As outlined in Attachment 2, the EPA believes discounts are only those where it is both advantageous and within the agency's control to take the discount.

Discounts that cannot be claimed for reasons out of the agency's control should not be reported as improper payments. If an agency never had the power to claim a discount in the first place, such as example 3b in Attachment 2, the terms of discount cannot be met. Therefore, the discount should not be considered as something which could potentially lead to the loss of taxpayer dollars.

Discounts should only be claimed when it is advantageous for the agency to take the discount and should only be reported as improper payments when the agency could have reasonably saved the taxpayer money but failed to do so. In examples 3a and 3c of Attachment 2, taking the discount would likely result in a loss of taxpayer dollars over the long-term. If the EPA was to report such discounts not taken as improper payments this would lead to reporting contrary to the intent of IPERA.

The agency does track the reasons why discounts were not taken. In FY 2012, the agency will provide narrative detail on its discount processes. Due to newly implemented financial systems, discounts lost coding is still being evaluated and verified consequently the information will not be ready for the FY 2012 AFR. In FY 2012, both systems data and standard operating procedures for improper payment will be updated to ensure consistency with the agency's FY 2012 OCFO Guidance on Improper Payments. We are committed to ensuring systems data on discounts lost and missed dollars will be available in the FY 2013 AFR.

¹ According to IPERA, any payment that does not account for credit for applicable discounts falls under the definition of an improper payment.

² Purpose: "To amend the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) in order to prevent the loss of billions in taxpayer dollars." Pub.L. 111-204

EPA Response to Office of Inspector General Draft Report – Project No. OA-FY11-0674
Recommendation 3.1: Discounts Not Taken

February 9, 2012

In Chapter 3 of the OIG's Draft Audit, Project No. OA-FY 11-0674, the OIG recommends that OCFO "[r]eport discounts not taken as improper payments under IPERA starting with the FY 2012 AFR, unless clarification from OMB states otherwise."³

We request the OIG revise the draft report to state, "We recommend that the Office of the Chief Financial Officer report discounts not taken as improper payments under IPERA, starting with the FY 2012 AFR, when it is both advantageous and within the agency's control to take the discount."

- 1) EPA has performed extremely well in claiming applicable discounts offered by vendors in FY 2011. The RTP Finance Center successfully claimed 666 discounts worth \$333,641. This amount represents 88% of the dollar value of all discounts offered to the agency resulting in clear savings to the taxpayer.
- 2) Concerning the \$45,940 of missed discounts, we respectfully disagree with the OIG's interpretation that all missed discounts are *de facto* improper payments. Our divergence of opinion stems from conflicting interpretations of Office of Management and Budget Circular A-123, Appendix C, which states, in relevant part that an improper payment consists of "any payment that does not account for credit for applicable discounts." In our opinion, the term "applicable discounts" requires some discernment. The agency strongly believes that "applicable discounts" are only those discounts where it is both advantageous and possible for the agency to claim that discount.
- 3) In the world of commercial payments, there are valid reasons as to why certain discounts cannot be taken. In such cases discounts should be considered "non-applicable" for improper payments reporting purposes. These situations include:
 - a. The invoice approval and payment process is rushed for the sake of claiming a discount, when doing so would erode established internal control procedures. Before making a payment the agency ensures that appropriate payment documentation is established to support payment of invoices and interest penalties. A rushed process could prevent adequate review and approval increasing the likelihood of actual improper payments (e.g., wrong amount, unallowable costs, wrong vendor).
 - i. This position is supported by OMB's September 14, 2011 memorandum #M-11-32, "Accelerating Payments to Small Businesses for Goods and Services." This memorandum encourages agencies to pay small business contractors within 15 days while also maintaining necessary internal controls. More specifically, it states that, "*To the extent practicable, Federal agencies shall establish a goal of paying small business contractors within 15 days of receiving proper documentation... At the same time, agencies need to ensure expeditious processing throughout (including inspection and acceptance) to facilitate prompt payment to small businesses, while also maintaining necessary internal controls*" [emphasis added].

³ Project No. OA-FY11-0674, p. 8.

- ii. The OCFO requires approvals on all invoices prior to payment, which is in compliance with the Prompt Payment Act. This shows that the maintenance of necessary internal controls is of fundamental importance for federal agencies, and must be balanced with advantages provided by discounts.
 - b. Errors occurring external to the agency, such as late invoice or late receipt of goods or services. Prior to making payment the agency must receive the goods/services, invoices and appropriate documentation. Payment cannot occur within the discount window when the invoice or goods/services are received late.
 - c. The Effective Annual Rate offered in the discount is less than the Treasury Current Value of Funds rate. If the discount offered is less than the Current Value of Funds, it is not advantageous for the government to take the discount.⁴
- 4) Finally, there are some situations in which discounts ought to be reported as improper payments. For example, the agency may take the wrong discount percentage or may take a discount beyond the specified discount period. These situations clearly lie within the agency's realm of control and should therefore be reported as improper payments.

⁴ Treasury's Financial Management Services website provides a discount calculator at <http://www.fms.treas.gov/prompt/discount.html>