



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5110
Facsimile: (202) 418-5522

June 18, 2015

The Honorable Timothy G. Massad
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st St., NW
Washington, DC 20581

Dear Chairman Massad:

My Office has concluded a review of the Commodity Futures Trading Commission's (CFTC) compliance with the Improper Payments Act¹ for Fiscal Year (FY) 2014, and nothing came to our attention that would indicate that the CFTC did not comply with its requirements.

The Improper Payments Act, as amended, directs each agency Inspector General to review agency findings regarding all levels of improper payments and submit a report of its findings to the head of the agency, select Congressional committees, and the Comptroller General.² Most recently, on January 10, 2013, President Obama signed into law the Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA), further amending the Improper Payments Act.³ The Office of Management and Budget (OMB) issued guidance documents detailing agency requirements for implementing the Act, which are discussed below.⁴

Under the Act, 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."⁵ As of IPERIA's implementation in 2013, this includes not only

¹ Improper Payments Information Act of 2002 (Improper Payments Act or the Act), Pub. L. No. 107-300, 116 Stat. 2350 (2002)(codified at 31 U.S.C. § 3321 note (2015)).

² OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, M-15-02, APPENDIX C TO CIRCULAR NO. A-123, REQUIREMENTS FOR EFFECTIVE ESTIMATION AND REMEDIATION OF IMPROPER PAYMENTS [OMB M-15-02], *6, *16, *40 (2014) (noting that agencies must include improper payment information in their Annual Financial Report (AFR), that agency Inspectors General must review "agency improper payment reporting in the agency's AFR," and listing the required recipients of the Inspector General's report). Agencies have reporting requirements not only for programs that meet the statutory threshold for being susceptible to significant improper payments, as described *infra* note 7, but for programs in which any improper payments were identified. *See id.* at *16 (detailing the less extensive reporting requirements for improper payment estimates that do not result in a program being classified as susceptible to significant improper payments).

³ Improper Payments Elimination and Recovery Improvement Act of 2012, Pub. L. No. 112-248, 126 Stat. 2390 (2013). The Improper Payments Act was earlier amended by the Improper Payments Elimination and Recovery Act of 2010 (IPERA), Pub. L. No. 111-204, 124 Stat. 2224 (2010).

⁴ *See generally, e.g.* OMB M-15-02, *supra* note 2 (discussing IPERIA's implementation); OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, M-11-16, ISSUANCE OF REVISED PARTS I AND II TO APPENDIX C OF OMB CIRCULAR A-123 [OMB M-11-16] (2011) (discussing IPERA's implementation).

⁵ 31 U.S.C. § 3321 note (g)(2)(A); *see also* OMB M-15-02, *supra* note 2, at *7 (explaining what an improper payment is under the Act).

payments made to non-Federal recipients, but to Federal employees as well.⁶ Agencies must review all programs and activities annually to determine whether any are “susceptible to significant improper payments” under the terms of the statute.⁷

In accordance with OMB guidance, the agency’s Inspector General is expected to review the agency’s Annual Financial Report (AFR) and assess the agency’s compliance with the Improper Payments Act. Accordingly, the Office of the Inspector General conducted a review of the Commodity Futures Trading Commission (CFTC) compliance with the Improper Payments Act for Fiscal Year (FY) 2014. Our review was carried out in a reasonable and prudent manner and in accordance with OMB Circular Nos. A-123 (M-15-02)⁸ and A-136.⁹

Our scope included reviewing the CFTC Accounting Officer’s attestation to the absence of any improper payments at CFTC during FY 2014, a review of CFTC’s Annual Financial Report—including the independent auditors report of the CFTC’s FY 2014 financial statements, and the financial statements for the CFTC Customer Protection Fund for FY 2014. We also reviewed the CFTC database of payments during FY 2014 which contained approximately 7,032 transactions and \$79 million in non-payroll payments to vendors, individuals, and external entities. Additionally, we reviewed payroll transactions for FY 2014. For payroll during FY 2014 there were 1,621,764 transactions and over \$125 million in outlays.

In order to identify potential improper payments we established several database queries which the Office of Financial Management (OFM) used to generate reports indicating no improper payments were made during FY 2014. OFM informed us, and we reviewed documentation indicating, that payments were checked to the government-wide “Do Not Pay”¹⁰ list and no exceptions were found. We also reviewed the Agency Financial Report for FY2014 and found that the agency determined “that none of its programs and activities are susceptible to significant improper payments at or above the threshold levels set by OMB,”¹¹ and we agree. The agency’s report did cite compliance with standards applicable prior to FY2014, rather than the updated standards found in IPERIA and OMB M-15-02. However, our review concluded that the agency was also in compliance with currently applicable standards because none of the programs would have exceeded the lower 1.5 percent threshold to be classified as susceptible to significant improper payments.¹²

⁶ OMB M-15-02, *supra* note 2, at *8 (noting that payments to employees include “salary, locality pay, travel pay, and other payments”).

⁷ See OMB M-15-02, *supra* note 2, at *9 (defining significant improper payments as “gross annual improper payments . . . in the program exceeding (1) both 1.5 percent of program outlays and \$10,000,000 of all program or activity payments [that fiscal year] or (2) \$100,000,000 (regardless of the improper payment percentage of total program outlays).”).

⁸ Dated October 20, 2014.

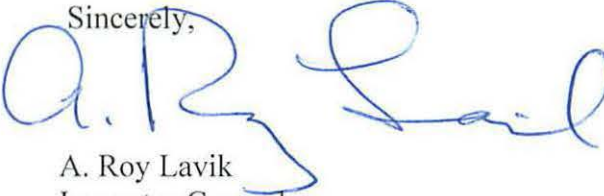
⁹ Dated September 18, 2014.

¹⁰ See OMB M-15-02, *supra* note 2, at *44 (listing reference to the Treasury Department’s Do Not Pay Program as a control activity agencies should use to identify improper payments).

¹¹ See Commodity Futures Trading Commission Agency Financial Report Fiscal Year 2014 page 90, available at <http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/2014afr.pdf>.

¹² In addition, the agency’s review already addressed all payment programs, including employee pay and benefits. Thus, its review also addressed the expanded scope of applicable payment programs or activities under IPERIA.

Therefore, during the OIG's review, nothing came to our attention that would indicate that the CFTC did not comply with Improper Payment Act requirements. We will coordinate with the agency to ensure it properly implements and cites the updated standards going forward.

Sincerely,

A. Roy Lavik
Inspector General

cc:

The Honorable Ron Johnson, Chairman,
Senate Committee on Homeland
Security and Governmental Affairs;

The Honorable Thomas R. Carper, Ranking
Member Senate Committee on Homeland
Security and Governmental Affairs;

The Honorable Jason Chaffetz, Chairman
House Committee on Oversight and
Government Reform;

The Honorable Elijah Cummings,
Ranking Member
House Committee on Oversight and
Government Reform;

Mr. Gene L. Dodaro
Comptroller General of the United States,
United States Government Accountability
Office

Mr. David Mader
Controller of the Office of Federal Financial
Management,
Office of Management and Budget.

Ms. Mary Jean Buhler
Chief Financial Officer
Commodity Futures Trading Commission