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United States Government Accountability Office  
Washington, DC 20548

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September 16, 2005

The Honorable Tom Coburn  
Chairman, Subcommittee on Federal Financial Management, Government Information, and  
International Security  
Committee on Homeland Security and Governmental Affairs  
United States Senate

Subject: *Post-Hearing Questions Related to Agency Implementation of the  
Improper Payments Information Act*

Dear Mr. Chairman:

On July 12, 2005, we testified before your subcommittee at a hearing entitled “Improper Payments: Where Are Truth and Transparency in Federal Financial Reporting?” At that hearing, we discussed our findings on federal agencies’ implementation of the Improper Payments Information Act of 2002 (IPIA) based on our review of agencies’ fiscal year 2004 Performance and Accountability Reports (PAR). Our review focused on the extent to which agencies have performed the required assessments to identify programs and activities that are susceptible to significant improper payments, and the annual amount estimated for improper payments by federal agencies.

This report responds to your August 24, 2005, request that we provide answers to follow-up questions relating to our July 12, 2005, testimony. Your questions, along with our responses, follow.

- 1. Pursuant to the Improper Payments Information Act of 2002 (P.L. 107-300), OMB provided implementation guidance to agencies, and provided the Social Security Administration with supplemental guidance on improper payments reporting. This guidance establishes a distinction between “avoidable” and “unavoidable” payments. Are you concerned with this supplemental guidance? What are the implications of making this distinction? Is it GAO’s understanding that agencies would not be required to report improper payment information to the Congress if they are considered to be “unavoidable” under OMB’s guidance?*

On August 28, 2003, the Office of Management and Budget (OMB) advised Social Security Administration (SSA) on improper payment reporting. Under this advice, SSA could exclude from its estimate of improper payments those payments that it made following constitutional, statutory, or judicial requirements even though those payments are

subsequently determined to be incorrect. These payments were deemed by OMB to be “unavoidable” improper payments, as there are no administrative changes SSA could implement that would eliminate such payments nor would SSA be likely to receive other relief from such requirements.

IPIA defines an improper payment as a payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements, and includes any payment to an ineligible recipient, any payment for an ineligible service, any duplicate payment, any payment for services not received, and any payment that does not account for credit for applicable discounts.

While the definition of improper payments does not use the terms “avoidable” or “unavoidable,” we agree with OMB that a payment that was made following a legal requirement to make the payment subject to subsequent judicial or administrative determinations that the payment is not due should not be included in an agency’s estimate of its improper payments. We agree with OMB’s conclusion not because it is an “unavoidable” payment but rather because it does not meet the definition of an improper payment under the act.

For example, SSA has cited that it is required by statute to continue making a payment, even if SSA concludes that the recipient is no longer eligible, until certain due process requirements have been met. In this example, SSA, because of the statutory requirement, must make the payment. Because SSA is continuing to make the mandatory payment, the amount is not incorrect under IPIA. The statute requires SSA to make the payment until applicable due process requirements result in a determination that the person is ineligible; therefore, the mandatory payments have not been made to an ineligible recipient. Accordingly, the facts would not support inclusion of these payments as improper payments as defined under IPIA.

While we recognize that OMB’s advice is only applicable to SSA, we are concerned that other agencies might rely on it, particularly in light of the justification OMB provided for not including the above, and similar, payments. In its February 13, 2004, response to the Senate Committee on Finance inquiry, OMB discussed in detail its advice to SSA and its rationale for establishing a distinction between “unavoidable” and “avoidable” improper payments. While we concur with OMB’s result for the SSA examples cited in its response to the committee inquiry, we are concerned that the result is based on a principle that might not always be applicable in other fact situations. We would caution OMB against concluding that any payment that is unavoidable – that is, the agency cannot do anything about it – should not be included as an improper payment under IPIA. Rather, the exclusion of payments should be made individually on a fact-specific basis using the definition provided in IPIA. In addition, we believe that agencies should track and monitor these types of payments as part of their debt collection efforts and have the ability to readily report this type of information upon request.

2. *Is SSA the only agency where “unavoidable” and “avoidable” improper payment distinctions arise? If not, which other agencies have raised these issues, and what is GAO’s concern with such a distinction?*

Many of the government programs with improper payments are benefit programs like those of SSA, which involve recipients and providers of services. Although there could be other agencies that also face having to make payments as a result of legal or regulatory requirements, we are not aware of other agencies having raised the issue of “unavoidable” and “avoidable” improper payments. It is our understanding that OMB’s advice was specific to SSA.

3. *In its report, entitled “Financial Management: Challenges in Meeting Requirements of the Improper Payments Information Act,” GAO reported, based on information provided by OMB from PARs collected, that all programs and activities in the Department of Defense had been assessed for risk of making improper payments. Only two programs within the Department of Defense reported improper payment information: the Military Retirement Fund and Military Health Benefits. Please comment on the following:*

- *Whether or not GAO believes that all programs in the Department of Defense have been adequately assessed for risk of improper payments.*

In its fiscal year 2004 PAR, the Department of Defense (DOD) reported it had assessed all programs and activities for susceptibility to significant improper payments, that is, improper payments exceeding \$10 million and 2.5 percent of program payments, pursuant to criteria OMB included in its implementing guidance. While we have provided data on DOD’s and other agencies’ implementation efforts to meet certain requirements under IPIA, we have not analyzed DOD’s assessments of its programs nor its improper payment estimates.

- *Any other programs within the Department of Defense that GAO suspects to be at risk for making “significant” improper payments.*

Based on GAO’s most recent high-risk series work<sup>1</sup> and an August 2005 DOD Office of Inspector General (OIG) report on DOD’s identification and reporting of erroneous payments,<sup>2</sup> we believe DOD may have other programs and activities that are at risk of making significant improper payments. In our January 2005 High-Risk Update, we identified 25 high-risk areas. Of the 25, 14 areas involve DOD, including 6 governmentwide high-risk areas (see table 1).

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<sup>1</sup>GAO, *High-Risk Series: An Update*, GA0-05-207 (Washington, D.C.: January 2005).

<sup>2</sup>Department of Defense Office of Inspector General, *Financial Management: Identification and Reporting of DoD Erroneous Payments*, D-2005-100 (Arlington, Va.: Aug. 17, 2005).

**Table 1: GAO Designated DOD High-Risk Areas**

<b>DOD high-risk areas</b>	<b>Year designated</b>
Approach to Business Transformation	2005
Personnel Security Clearance Program	2005
Support Infrastructure Management	1997
Business Systems Modernization	1995
Financial Management	1995
Contract Management	1992
Supply Chain Management (formerly Inventory Management)	1990
Weapon Systems Acquisition	1990
<b>Total</b>	<b>8</b>
<b>Governmentwide high-risk areas</b>	
Establishing Appropriate and Effective Information-Sharing Mechanisms to Improve Homeland Security	2005
Management of Interagency Contracting	2005
Managing Federal Real Property	2003
Implementing and Transforming the Department of Homeland Security	2003
Strategic Human Capital Management	2001
Protecting the Federal Government's Information Systems and the Nation's Critical Infrastructure	1997
<b>Total</b>	<b>6</b>
<b>Grand total</b>	<b>14</b>

Source: GAO.

For years, GAO has reported on inefficiencies and lack of adequate transparency and appropriate accountability across DOD's major business areas, resulting in billions of dollars of wasted resources annually. In addition, DOD's financial management deficiencies represent the single largest obstacle to achieving an unqualified opinion on the U.S. government's consolidated financial statements. Among other things, these deficiencies adversely affect the department's ability to control costs, ensure basic accountability, and prevent fraud. DOD's financial management problems have negatively affected its business operations, including activities related to military pay, travel, property, contract payments, and automated systems. Based on this, we believe that programs related to these areas may be at risk of making significant improper payments.

In its August 2005 report, the DOD OIG reported that DOD estimated approximately \$977.5 million in erroneous payments associated with DOD fiscal year 2004 operations. DOD also identified the military pay activity as being at high risk of erroneous payments. Because DOD did not complete its preliminary estimates or identify high-risk areas until January 2005, none of this information was reported in DOD's fiscal year 2004 PAR. As

stated in our response to the first part of question 3, we have not analyzed DOD's assessments of its programs nor its improper payment estimates.

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We are sending a copy of this report to the Director of OMB and other interested parties. This report is also available on GAO's home page at <http://www.gao.gov>. Should you have any questions on matters discussed in this report or need additional information, please contact me at (202) 512-6906 or at [williamsm1@gao.gov](mailto:williamsm1@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Major contributors to this report include Carla Lewis, Assistant Director; Verginie Amirkhanian; and Donell Ries.

Sincerely yours,

A handwritten signature in black ink that reads "McCoy Williams". The signature is written in a cursive style with a large, prominent "M" and "W".

McCoy Williams  
Director, Financial Management and Assurance

(195069)

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