

U.S. Senate

Committee on Finance

For Immediate Release

Friday, Jan. 9, 2004

Grassley, Baucus Seek More Accurate Improper Payment Rates

WASHINGTON – Sen. Chuck Grassley, chairman of the Committee on Finance, and Sen. Max Baucus, ranking member, today expressed concern that the Office of Management and Budget has issued guidance to government agencies that likely will result in the understatement of improper or erroneous payments the agencies made for services and other items. The senators want Congress and taxpayers to receive an accurate accounting of improper payment rates.

The text of the senators' letter today to the Office of Management and Budget follows.

January 9, 2004

Via mail and telefax (202) 395-3729

The Honorable Joshua B. Bolten
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Mr. Bolten,

We are writing to express our concern about guidance issued by the Office of Management and Budget to assist agencies in implementing the Improper Payments Act of 2002 (Act) P.L. 107-300. OMB's guidance appears to ease agency reporting of improper payments by eliminating the need for risk assessments if an agency concludes that improper payments do not exceed 2.5 percent **and** \$10 million of program spending. The statute itself required agency risk assessments and corrective action plans to be completed on all programs and activities where improper payments are estimated to exceed \$10 million. OMB also issued supplemental guidance to the Social Security Administration (SSA) to address the reporting of improper payments that are considered to be "unavoidable." Specifically, OMB decided that payments determined to be "unavoidable" would no longer need to be reported as improper payments.

This guidance appears to change the parameters of what is and is not reported. Moreover, it appears that OMB guidance will artificially reduce improper/erroneous payment figures. In other

words, the improper payment figures that will eventually be reported to the public will look better, and feel better, than they really are, and the public and the Congress will have a less accurate understanding of the integrity of our federal programs.

Federal agencies are responsible for managing tens of thousands of programs and activities and expending hundreds of billions of dollars annually to address the needs of the American public. As implementers of these programs and activities, agencies have a stewardship responsibility and, as such, must take all reasonable actions to design, implement and manage them in a manner which ensures that program objectives are met and that controls exist to safeguard federal funds from improper or erroneous payments. In the past several years the General Accounting Office (GAO) and OMB reported partial estimates of erroneous payments amounting to tens of billions of dollars annually; these reports have also noted that government-wide estimates of improper payments do not exist.

The Improper Payments Information Act of 2002 (Act) was enacted on November 26, 2002, to address this problem. It requires all federal agencies to estimate improper payments in their programs and activities and to report these amounts to the Congress annually. The Act gave OMB a significant role in its implementation, by requiring OMB to issue agency guidance on how to implement its provisions. OMB issued this guidance in May 2003 and has been working with agencies to clarify the Act's requirements and respond to agency questions on implementation and reporting issues.

Because of the magnitude and implications of improper payments government-wide, and the implications of OMB's guidance, it is critical that agencies take their responsibilities under the Act seriously. Agency reports must be the epitome of honest and complete disclosure on the amounts of improper payments occurring, their causes, barriers to eliminating these causes, planned actions to reduce or eliminate these payments, and the results of those actions.

We consider the reports required by the Act to provide critical information that will assist in the Committee's oversight and monitoring of federal programs and activities, as well as the Congress' evaluation of agency management and control over federal funds. The information on improper payments is critical to Congress' understanding of existing problems and its ability to legislate to reduce improper payment levels. Only with careful analysis of this information can we ensure the most effective, efficient and economical operation of federal programs.

In light of the importance of the improper payment issue, and the concerns that we have expressed regarding the implementation of the guidance recently issued by OMB, we would appreciate receiving responses to the attached questions.

Thank you in advance for your attention to this matter. We would appreciate receiving OMB's responses by January 28, 2004.

Sincerely,

Charles E. Grassley
Chairman

Max Baucus
Ranking Member

IMPROPER PAYMENT QUESTIONS

1. OMB's Improper Payments Information Act guidance issued on May 21, 2003, called for all agencies covered by Section 57 of OMB Circular A-11 to continue reporting improper payment information as required in previous years. Please describe whether or not the agencies covered by Section 57 provided to OMB all of the information required by Section 57 for the past three-year period.

a. For each agency identified, please summarize the information provided to OMB, including the amounts of improper payments, causes and results of corrective action(s), if any.

b. Please identify each agency covered by Section 57 that did not provide OMB with all the required information and each program for which the information was not provided. Please describe the nature of each reporting deficiency, and any action(s) OMB took to correct the deficiency.

2. The Improper Payments Information Act requires agencies to report improper payments to Congress each year. When these payments are estimated to exceed \$10 million or more in any program or activity, agencies are required to report additional information as well. However, OMB guidance modifies this reporting requirement by adding an additional requirement: that improper payments exceed both 2.5 percent and \$10 million.

a. Please explain in detail OMB's justification for imposing the 2.5 percent standard.

b. Please list the agencies and programs that have previously reported improper payments under Section 57 of Circular A-II that would not meet the two-prong OMB guidance standard, in other words how much of the previously reported improper payments exceed the \$10 million threshold, but not the 2.5 percent threshold?

3. Please explain why 2.5 percent of program spending on improper payments is a reasonable threshold for additional reporting requirements, especially given that much smaller percentages could

amount to hundreds of millions or billions of dollars in improper payments in programs such as Medicare or SSA's OASI and DI programs?

4. GAO has reported that the principal cause of improper payments is a breakdown in systems of internal controls. The Federal Manager's Financial Integrity Act (FMFIA) has required annual executive agency reviews and reporting on internal controls since about 1984. OMB was heavily involved in FMFIA's implementation across the government. Why is it that the problems that cause improper payments weren't previously identified and corrected? Are agencies taking their FMFIA review and reporting responsibilities seriously?

5. What is OMB doing to ensure that federal agencies take proactive measures to improve weak internal controls and implement safeguards to ensure against improper payments?

SSA-Specific Issues

1. OMB provided SSA with supplemental guidance on improper payments reporting that establishes a distinction between "avoidable" and "unavoidable" payments – terms that have not been part of the general improper payment lexicon. Why did OMB decide to adopt this distinction in this context?

2. For items considered to be "unavoidable", we understand that OMB guidance would not require agencies to report that information to the Congress under the Improper Payments Information Act. Is our understanding correct? Would so-called "unavoidable" improper payment statistics be collected at all? Would they be reported to OMB?

3. What dollar impact does the introduction of this avoidable/unavoidable distinction have on the amounts of improper payments reported by SSA for 2003? What would the improper payment rate or amount be for SSA for 2003 under 2002 improper payment definitions?

4. If statutory or regulatory provisions require agencies to make payments that the agency otherwise would consider improper, why shouldn't an agency communicate this to the Congress so that the Congress can consider appropriate legislative solutions?

5. Is SSA the only agency where “unavoidable” and “avoidable” improper payment distinctions arise? If not, which other agencies have raised these issues and what has OMB’s response to them been?

6. Another area classified as “unavoidable” is payment made for Title II based on earnings estimates because of program design requirements. Again, why should this information not be reported, tracked, and updated to identify agency actions to recover improperly paid amounts and identify the status of corrective actions?

7. Why shouldn’t “Undetected Error” amounts be reported since it appears that they would represent amounts that were paid that should not have been paid – are these not improper payments?

8. OMB’s SSA-specific guidance for the category “Undetected Error” concluded that OASI, DI, and SSI should not include estimates of these amounts as improper payments unless SSA had evidence that a specific type of erroneous payment was made. Wouldn’t the statistical sampling you require in other guidance provide the estimates of these payments? If so, why not report the results?