

Federal Housing Finance Agency  
Office of Inspector General



# **FHFA Complied with Applicable Improper Payment Requirements During Fiscal Year 2017**

Audit Report • AUD-2018-009 • April 26, 2018



AUD-2018-009

April 26, 2018

## Executive Summary

The Improper Payments Information Act of 2002 (IPIA), as amended by the Improper Payments Elimination and Recovery Act of 2010 (IPERA) and the Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA) (collectively, IPIA, as amended), requires federal agencies to periodically review, estimate, and report programs and activities that may be susceptible to significant improper payments. IPIA was amended by IPERA to, among other things, direct federal Inspectors General to determine annually whether their respective agencies are in compliance with the statute and to submit a report to the head of the agency, Congressional oversight committees, the Comptroller General of the United States, and the controller of the Office of Management and Budget (OMB).

The Federal Housing Finance Agency (FHFA or Agency), through its Office of General Counsel (OGC), maintains that most requirements of the IPIA, as amended, are not applicable to the Agency because those requirements apply only to payments made with federal funds and FHFA does not finance its operations with federal funds. That said, FHFA asserts that it has put controls in place to achieve the intent of the IPIA, as amended. We conducted a performance audit to assess the Agency's compliance with the IPIA, as amended, for fiscal year 2017. We found that FHFA complied with the applicable provisions of the IPIA, as amended, as well as related criteria established by OMB.

This report was prepared by Heath Wolfe, Director of Audit Operations, with the assistance of Bob Taylor, Assistant Inspector General for Audits. We appreciate the cooperation of FHFA staff, as well as the assistance of all those who contributed to the preparation of this report.

This report has been distributed to FHFA, Congress, OMB, and others and will be posted on our website, [www.fhfaoig.gov](http://www.fhfaoig.gov).

Marla A. Freedman, Deputy Inspector General for Audits /s/

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## **ABBREVIATIONS .....**

AFR	Agency Financial Report
FHFA or Agency	Federal Housing Finance Agency
OGC	Federal Housing Finance Agency Office of General Counsel
OIG	Federal Housing Finance Agency Office of Inspector General
GAO	Government Accountability Office
IPERA	Improper Payments Elimination and Recovery Act of 2010
IPERIA	Improper Payments Elimination and Recovery Improvement Act of 2012
IPIA	Improper Payments Information Act of 2002
OMB	Office of Management and Budget
OMB M-15-02	Office of Management and Budget Memorandum M-15-02, Appendix C to Circular No. A-123, <i>Requirements for Effective Estimation and Remediation of Improper Payments</i>
PAR	Performance and Accountability Report
U.S.C.	United States Code

## BACKGROUND .....

Because federal agencies regularly make payments to program beneficiaries, grantees, vendors, and contractors, or on behalf of program beneficiaries, there is a possibility that some of these payments may be “improper” in one or more respects. To provide estimates and report improper payments by federal agencies, Congress enacted IPIA in 2002,<sup>1</sup> which it amended in 2010 and 2013. IPIA, as amended, requires federal agencies to periodically review, determine, estimate, and report programs and activities that may be susceptible to significant improper payments.<sup>2</sup> According to IPIA, as amended, the term “payment” means: “[A]ny transfer or commitment for future transfer of Federal funds such as cash, securities, loans, loan guarantees, and insurance subsidies to any non-Federal person or entity or a Federal employee, that is made by a Federal agency, a Federal contractor, a Federal grantee, or a governmental or other organization administering a Federal program or activity.”<sup>3</sup>

To provide further guidance to federal agencies on the improper payments covered by IPIA, as amended, OMB issued a memorandum in October 2014 that defines “improper payment” as:

[A]ny payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. Incorrect amounts are overpayments or underpayments that are made to eligible recipients (including inappropriate denials of payment or service, any payment that does not account for credit for applicable discounts, [footnote omitted] payments that are for an incorrect amount, and duplicate payments). An improper payment also includes any payment that was made to an ineligible recipient or for an ineligible good or service, or payments for goods or services not received (except for such payments authorized by law). In addition, when an agency’s review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment must also be considered an improper payment.<sup>4</sup>

IPIA, as amended, directs federal agencies to put into place internal controls designed to eliminate payment errors, waste, fraud, and abuse, including reducing and recapturing

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<sup>1</sup> Public Law No. 107-300, 31 U.S.C. § 3321 note.

<sup>2</sup> Public Law No. 111-204, 31 U.S.C. § 3321 note.

<sup>3</sup> Public Law No. 112-248, 31 U.S.C. § 3321 note.

<sup>4</sup> OMB Memorandum M-15-02, Appendix C to Circular No. A-123, *Requirements for Effective Estimation and Remediation of Improper Payments*, at Part I ¶¶ 2 and 3 (Oct. 20, 2014) [hereinafter OMB M-15-02].

erroneous payments. OMB M-15-02 establishes a four-step process for agencies to follow to identify those operations subject to the IPIA, as amended, and to design and implement appropriate internal controls to reduce the risk of improper payments:

1. Review all programs and activities and identify those that are susceptible to significant improper payments;
2. Obtain a statistically valid estimate of the annual amount of improper payments in programs and activities identified in Step 1;
3. Implement a plan sufficient to reduce improper payments; and
4. Report annually on improper payments in the agency financial report (AFR) or the performance and accountability report (PAR).<sup>5</sup>

To determine an agency's compliance with IPIA, as amended, OMB M-15-02, requires each agency Inspector General to review their agency's AFR or PAR (and any accompanying information) for the most recent fiscal year. Compliance under IPIA, as amended, means that the agency has:

1. Published an AFR or PAR for the most recent fiscal year and posted that report and any accompanying materials required by OMB on the agency website;
2. Conducted a program-specific risk assessment for each program or activity that conforms with Section 3321 note of Title 31 U.S.C. [i.e., IPIA, as amended] (if required);
3. Published improper payment estimates for all programs and activities identified as susceptible to significant improper payments under its risk assessment (if required);
4. Published programmatic corrective action plans in the AFR or PAR (if required);
5. Published, and is meeting, annual reduction targets for each program assessed to be at risk and estimated for improper payments (if required and applicable); and

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<sup>5</sup> OMB M-15-02, App. C, *supra* note 1, at 9-16. A PAR provides both financial and performance information that enables the President, the Congress, and the public to assess the performance of an agency relative to its mission and to demonstrate accountability. An AFR provides similar information, but a performance section is not included. See OMB, Circular A-136, *Financial Reporting Requirements*, at 11-13 (Sept. 18, 2014).

6. Reported a gross improper payment rate of less than 10 percent for each program and activity for which an improper payment estimate was obtained and published in the PAR or AFR.<sup>6</sup>

Inspectors General are to complete their annual compliance reviews within 180 days after their respective agencies issue their AFRs or PARs and report their findings.<sup>7</sup> If an Inspector General finds that an agency has not met one or more of the six elements, that agency is required by IPIA, as amended, to submit a plan to the Congress describing the actions it will take to come into compliance.<sup>8</sup> Further, OMB will notify agencies of additional required actions as needed based on the compliance level of each agency. OMB M-15-02 provides detailed information on agency compliance planning and related efforts to become compliant.

FHFA issued its fiscal year 2017 PAR on November 15, 2017. Pursuant to IPIA, as amended, we conducted this performance audit.

## FACTS AND ANALYSIS .....

### Not All IPIA Requirements Are Applicable to FHFA

In its 2017 PAR, FHFA makes no representations that it is covered by IPIA, as amended. Since 2012, FHFA's OGC has advised our office that it has concluded that various subsections of IPIA, as amended, are only applicable to payments made with federal funds, and that these subsections do not apply to FHFA because it is an independent regulatory agency that does not seek appropriations for its operations. Consequently, OGC reasons that payments made by the Agency, such as payments to vendors, are not transfers of federal funds.<sup>9</sup>

Figure 1 below summarizes the requirements of the IPIA, as amended, and the elements that FHFA considers inapplicable to its operations.

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<sup>6</sup> OMB M-15-02, App. C, *supra* note 1, at Part II § A(3).

<sup>7</sup> OMB M-15-02, App. C, *supra* note 1, at Part II § A(2).

<sup>8</sup> IPERA § 3(c)(1)(A), *see* 31 U.S.C. § 3321 note.

<sup>9</sup> *See* 12 U.S.C. § 4516(f).

**FIGURE 1. FHFA'S IPIA, AS AMENDED, COMPLIANCE FOR FISCAL YEAR 2017**

Compliance Element	FHFA Action
The agency has published an annual AFR or PAR for the most recent fiscal year and posted that report and any accompanying materials required under guidance of OMB on the agency website.	FHFA published its 2017 PAR and included relevant information pertaining to improper payments.
The agency has conducted a program-specific risk assessment for each program or activity that conforms with the IPIA, as amended (31 U.S.C. § 3321 note) (if required).	FHFA determined that this section of IPIA, as amended, is not applicable to the Agency.
The agency has published improper payments estimates for programs and activities identified as susceptible to significant improper payments under its risk assessment (if required).	FHFA determined that this section of IPIA, as amended, is not applicable to the Agency.
The agency has published programmatic corrective action plans in its PAR or AFR (if required).	FHFA determined that this section of IPIA, as amended, is not applicable to the Agency.
The agency has published, and is meeting, improper payments reduction targets for each program assessed to be at risk and estimated for improper payments (if required and applicable).	FHFA determined that this section of IPIA, as amended, is not applicable to the Agency.
The agency has reported a gross improper payment rate of less than 10 percent for each program and activity for which an estimate was obtained and published in its AFR or PAR.	FHFA determined that this section of IPIA, as amended, is not applicable to the Agency.

We reviewed the information provided by FHFA's OGC, and the Office of Inspector General's (OIG) Office of Counsel made an independent assessment of the reasonableness of the applicable legal authorities on which OGC relied. Based on its review, OIG's Office of Counsel determined that OGC's analysis is reasonable.

Notwithstanding the inapplicability of these various IPIA, as amended, subsections, FHFA advises in its PAR:

FHFA, in the spirit of compliance and as part of its sound internal control structure, has established controls to detect and prevent improper vendor payments. ... FHFA has not identified any programs or activities susceptible to significant improper payments that meet IPIA's thresholds.<sup>10</sup>

<sup>10</sup> See FHFA, *Fiscal Year 2017 Performance and Accountability Report* (Nov. 15, 2017) (online at [www.fhfa.gov/AboutUs/Reports/Pages/Performance-and-Accountability-Report-2017.aspx](http://www.fhfa.gov/AboutUs/Reports/Pages/Performance-and-Accountability-Report-2017.aspx)).

To assess this representation by FHFA, we reviewed the following FHFA procedures and guidance implemented for fiscal year 2017 to mitigate the risks of fraud, misuse, and payment delinquency:

- Invoice and payment procedures;
- Purchase charge card procedures;
- Accrual and deobligation procedures; and
- Micro-purchase procedures and supplemental purchase cardholder guidance.

We noted no weaknesses in the design of these procedures and guidance. Furthermore, the Government Accountability Office (GAO) is charged with performing the audit of FHFA's annual financial statements.<sup>11</sup> As part of its audit, GAO audits FHFA's internal control over financial reporting. In its report *Financial Audit: Federal Housing Finance Agency's Fiscal Years 2017 and 2016 Financial Statements*, GAO opined that FHFA maintained, in all material respects, effective internal control over financial reporting as of September 30, 2017, based on relevant criteria. GAO also reported that during the audit, it identified deficiencies in FHFA's internal controls over financial reporting that were communicated to FHFA management. However, GAO did not consider these deficiencies to be material weaknesses or significant deficiencies.<sup>12</sup> According to our inquiries with FHFA staff, the deficiencies communicated by GAO did not relate to the design and effectiveness of FHFA's invoice and payment process controls.

## CONCLUSION.....

We conclude that FHFA complied with the applicable statutory improper payment requirements, as well as related criteria established in the related OMB M-15-02 for fiscal year 2017. As to the specific requirements of the IPIA, as amended, that FHFA's OGC has opined are non-applicable, we determined that OGC's analysis is reasonable.

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<sup>11</sup> 12 U.S.C. § 4516(h).

<sup>12</sup> According to the American Institute of Certified Professional Accountants' *Codification of Statements on Auditing Standards*, AU-C § 265.07, a material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness yet important enough to merit attention by those charged with governance.

## **FHFA COMMENTS AND OIG RESPONSE.....**

OIG provided FHFA an opportunity to respond to a draft report for this audit. In its management response, which is included as an appendix to this report, FHFA acknowledged our conclusion that it complied with the applicable provisions of the IPIA, as amended.

## **OBJECTIVE, SCOPE, AND METHODOLOGY .....**

Our audit objective was to assess FHFA's compliance with IPIA, as amended. The scope of the audit covered the period October 1, 2016, through September 30, 2017 (i.e., fiscal year 2017).

To accomplish the audit, we:

- Reviewed OIG's prior IPIA, as amended, audit documentation and audit report (AUD-2017-004, dated May 10, 2017);
- Reviewed IPIA, as amended by IPERA and IPERIA, and OMB M-15-02 regarding requirements that apply to FHFA and OIG;
- Determined whether there has been any change in FHFA's assessment of the applicability of IPIA, as amended, to the Agency, and obtained a review by OIG's Office of Counsel of that assessment;
- Determined whether FHFA published its PAR, and accompanying materials for fiscal year 2017, and posted that report, as well as any accompanying materials required by OMB, on the Agency's website;
- Determined whether FHFA was required to conduct program-specific risk assessments for each program or activity under 31 U.S.C. 3321 and OMB M-15-02;
- Interviewed applicable FHFA officials/staff to obtain any additional background information that may be required, such as improper payments assessments, related correspondence, and/or results of procedures performed, including any legal opinions received and decisions taken;
- Obtained and reviewed the Agency's invoice and payments procedures, purchase charge card procedures, accrual and deobligation procedures, micro-purchase procedures and supplemental purchase cardholder guidance, and internal control self-assessments for fiscal year 2017; and
- Reviewed GAO's report on its audit of FHFA's financial statements for fiscal years 2017 and 2016, and inquired of FHFA staff about deficiencies in internal control over financial reporting that GAO communicated to FHFA during the audit. The purpose of our inquiries was to determine whether any of the deficiencies communicated related to the design and effectiveness of FHFA's invoice and payment process controls.

We conducted this performance audit between January 2018 and April 2018 in accordance with generally accepted government auditing standards. Those standards require that audits be planned and performed to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our conclusions, based on our audit objective.

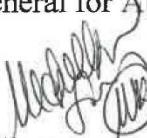
## APPENDIX: FHFA MANAGEMENT RESPONSE.....



### Federal Housing Finance Agency

#### MEMORANDUM

TO: Marla Freedman, Deputy Inspector General for Audit

FROM: Mark Kinsey, Chief Financial Officer 

SUBJECT: Audit: *FHFA Complied with Applicable Improper Payment Requirements During Fiscal Year 2017*

DATE: April 20, 2018

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Thank you for the opportunity to respond to the Federal Housing Finance Agency Office of Inspector General's (OIG) draft audit report titled *FHFA Complied with Applicable Improper Payment Requirements During Fiscal Year 2017* (Report). The Report presents the results of the OIG's performance audit to assess FHFA's compliance with the Improper Payments Information Act of 2002 (IPIA), as amended.

I am pleased that the OIG concluded that FHFA complied with the applicable provisions of the IPIA, as amended, as well as criteria established in the OMB Memorandum M-15-02, and that the Report noted no weaknesses in the design of FHFA procedures and guidance.

I would like to acknowledge the dedicated OIG staff that worked with FHFA during this audit.

If you have any questions relating to our response, please do not hesitate to call me at (202) 649-3780.

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