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**U.S. COMMODITY FUTURES TRADING COMMISSION**  
**Office of the Inspector General**  
**Office of Audits**

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Report Number: 22-AU-03  
June 17, 2022

**Compliance Review:**  
**Payment Integrity Information**  
**Act of 2019**



## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre

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**TO:** Rostin Behnam, Chairman  
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**FROM:** Miguel A. Castillo, CPA, CRMA

**DATE:** June 17, 2022

**SUBJECT:** Compliance Review: Payment Integrity Information Act of 2019

### Introduction

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To fulfill our obligations required by the Payment Integrity Information Act (PIIA) of 2019,<sup>1</sup> the Office of the Inspector General (OIG) completed a review of the U.S. Commodity Futures Trading Commission's (CFTC) compliance with the PIIA. The objectives of this review were to:

- Determine whether the CFTC is compliant with the PIIA Act of 2019 given that it did not report on payment integrity in its 2021 Financial Statements.
- Perform an independent risk assessment of CFTC payments to determine whether CFTC is a Phase 1 or Phase 2<sup>2</sup> agency.

We conducted this review in accordance with *Generally Accepted Government Auditing Standards* ([GAGAS](#)).

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<sup>1</sup> The PIIA (P.L. No. 116-117, codified at 33 USC § 3352, et seq.) requires the Inspector General of each executive agency to determine whether the executive agency is in compliance [with PIIA] and submit a report on the determination to the head of the executive agency; the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Reform of the House of Representatives; and the Comptroller General of the United States. OMB guidance added the Controller of the Office of Management and Budget and the appropriate authorizing and appropriations committees of Congress to report submission.

Office of Management and Budget (OMB) M-21-19, *Appendix C to OMB Circular A-123, Requirements for Payment Integrity Improvement*, states "every year, each agency Inspector General reviews relevant [improper (IP) and unknown payment (UP)] reporting and records pertaining to the programs within an agency to determine whether the agency complies with PIIA and OMB guidance."

<sup>2</sup> Phase 1 agencies are defined as those below an improper payment threshold of \$10 million and 1.5% of outlays for FY 2021; otherwise a Phase 2 designation. Outlays generally means payments.

## Executive Summary

Unlike previous years, the CFTC did not include a distinct discussion of payment integrity in its [FY 2021 Agency Financial Report](#) (AFR) and thus was non-compliant with PIIA reporting requirements. However, our independent risk estimates indicate that CFTC is a Phase 1 agency and are well below the established threshold for improper payments set at \$10 million and 1.5% of total payments for FY 2021. Specifically, we are 95% confident the risk of improper payments are no greater than \$202,108.54 or 0.06% of outlays for FY 2021. Table 1. shows the areas of non-compliance as required by OMB instruction.

**Table 1 - Per OMB M-21-19**

Notes	Reference to where the Requirement is published	Compliance Met? (Yes/No)	Payroll	Non Payroll	IG Evaluation of Accuracy	IG Evaluation of Completeness	Specific Recommendations to Meet Compliance	Agency Response	
1. (OMB M-21-19 Appendix C-IV-A-1a) 1a. Published Payment Integrity information with the annual financial statement.	Not included in AFR FY 2021	NA	No	No	No	OIG independently concluded that the CFTC is a phase 1 entity given historical low risk of improper payments and OIG FY 2021 estimate is below threshold of \$10M and 1.5% of total payments.	CFTC did not include payment integrity estimates in its FY 2021 financial statements or posted separately as accompanying materials.	As distinctly discussed in previous fiscal year's Agency Financial Reports (AFR), include payment integrity analysis with relevant links and estimates in future AFRs.	As decided during planning and implementation for the FY21 AFR reporting, we did not include PIIA reporting because it is not required under the FY21 A-136. The requirements were revised to eliminate reporting burdens for small agencies. We did not provide information to OMB through the Annual Data Call and we do not have a recovery audit program. Our discussion of the requirement to report in the AFR is attached; we had a follow-up call where we confirmed that it would not be meaningful to include anything in the AFR.
2. (OMB M-21-19 Appendix C-IV-A-1b) 1b. Posted the annual financial statement and accompanying materials on the agency website.	Not included in AFR FY 2022	NA	No	No	No				
3. (OMB M-21-19 Appendix C-IV-A-2a) 2a. Conducted IP risk assessments for each program with annual outlays greater than \$10,000,000 at least once in the last three years.	Not included in AFR FY 2023	NA	Yes	Yes	Yes				
4. (OMB M-21-19 Appendix C-IV-A-2b) 2b. Adequately concluded whether the program is likely to make Improper Payments (IPs) and Unknown Payments (UPs) above or below the statutory threshold.	OIG independently concluded that the CFTC is a phase 1 entity given historical low risk of improper payments and OIG FY 2021 estimate is below threshold of \$10M and 1.5% of total payments.	NA	Yes	Yes	Yes				
5. (OMB M-21-19 Appendix C-IV-A-3) 3. Published IP and UP estimates for programs susceptible to significant IPs and UPs in the accompanying materials to the annual financial statement.	NA	NA	NA	NA	NA	NA	NA	NA	
6. (OMB M-21-19 Appendix C-IV-A-4) 4. Published corrective action plans for each program for which an estimate above the statutory threshold was published in the accompanying materials to the annual financial statement.	NA	NA	NA	NA	NA	NA	NA	NA	
7. (OMB M-21-19 Appendix C-IV-A-5a) 5a. Published an IP and UP reduction target for each program for which an estimate above the statutory threshold was published in the accompanying materials to the annual financial statement.	NA	NA	NA	NA	NA	NA	NA	NA	
8. (OMB M-21-19 Appendix C-IV-A-5b) 5b. Demonstrated improvements to payment integrity or reached a tolerable IP and UP rate.	NA	NA	NA	NA	NA	NA	NA	NA	
9. (OMB M-21-19 Appendix C-IV-A-5c) 5c. Developed a plan to meet the IP and UP reduction target.	NA	NA	NA	NA	NA	NA	NA	NA	
10. (OMB M-21-19 Appendix C-IV-A-6) 6. Reported an IP and UP estimate of less than 10% for each program for which an estimate was published in the accompanying materials to the annual financial statement.	NA	NA	NA	NA	NA	NA	NA	NA	

*Note: To determine compliance under PIIA, we reviewed the Agency's Financial Report (and any accompanying information) for the most recent fiscal year (2021). If an agency does not meet one or more of these requirements then it is not compliant under PIIA. Source: <https://www.whitehouse.gov/wp-content/uploads/2021/03/M-21-19.pdf>*

CFTC's Office of Financial Management (OFM), housed within the CFTC Division of Administration (DA), indicated that due to its historical low improper

payment risk, its continuous attention to internal controls, and its PIIA reporting discussions with Office of Management and Budget, it believed a distinct payment integrity discussion was not meaningful for the FY 2021 AFR. We agree that CFTC's internal controls historically demonstrated low payment risk and note that OFM did not consult CFTC's General Counsel for PIIA compliance interpretations.

## **Recommendations:**

As distinctly included by OFM in previous fiscal year's Agency Financial Reports (AFR), we recommend the Financial Management Office:

1. Include payment integrity analysis with relevant links and estimates in future AFRs as required by OMB M-21-19;<sup>3</sup> and
2. Seek counsel for interpreting general law matters such as PIIA compliance.

## **Managements Comments and Our Evaluation**

We provided management a draft copy of the report. Management concurred with recommendation 1 and noted that reporting guidance in the Fiscal Year (FY) 2021 Office of Management and Budget (OMB) Circular A-136, *Financial Reporting Requirements*, was streamlined from prior years to reduce agency reporting burden and did not clearly articulate responsibilities for all federal entities. In reference to recommendation 2, management asserted it seeks and will continue to seek general law interpretations when deemed necessary. Management noted that OMB has acknowledged the [instruction] discrepancy and has worked to clarify the requirements surrounding PIIA reporting. These actions are responsive to the report finding and recommendations and we will perform a follow-up review of CFTC's FY 2022 AFR submission.

See [Appendix A](#) for further report details; [Appendix B](#) for additional background, scope, and methodology; and [Appendix D](#) for management comments in their entirety. We will publish this report on the Office of the Inspector General's web page and the report will be summarized in our September 2022 *Semiannual Report to Congress*. If you have any questions, please contact me at (202) 418-5084 or Tony Baptiste, Senior Program Analyst and lead for this report, at (202) 418-5115.

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<sup>3</sup> OMB M-21-9 (and required by statute. 31 U.S.C. 3351(2)).

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Office of Management and Budget (OMB)  
Upload final report to OMB's Max page at:  
[Payment Integrity Information Act Required Submissions to OMB](#)

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Tomeka Gilbert, Acting Executive Director  
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Keith A. Ingram, Accounting Officer  
John Rogers, Senior Advisor  
A. Roy Lavik, Inspector General  
Judith A. Ringle, Deputy Inspector General and Chief Counsel

## Appendix A

### Non-Compliance with PIIA Reporting

#### *Condition:*

Unlike previous years, the CFTC did not include a distinct discussion of payment integrity in the agency annual financial statement or post accompanying materials separately on the agency website.

#### *Criteria*

Office of Management and Budget (OMB) M-21-19, *Appendix C to OMB Circular A-123, Requirements for Payment Integrity Improvement*, requires agencies to ensure compliance with PIIA each year.<sup>4</sup> If a program does not meet one or more of the following requirements then it is not compliant under PIIA:

- ✗ **Published payment integrity information with the annual financial statement.** To achieve compliance the agency must publish any applicable payment integrity information in its annual financial statement in accordance with payment integrity guidance provided in OMB Circular A136. In addition, the agency must publish any applicable payment integrity information required in the accompanying materials to the annual financial statement in accordance with applicable guidance.
- ✗ Posted the annual financial statement **and accompanying materials** on the agency website. To achieve compliance the agency must include a **link to [paymentaccuracy.gov](https://www.paymentaccuracy.gov)** within its annual financial statement to any accompanying materials to the annual financial statement required under guidance from OMB and then publish their annual financial statement on their agency website.
- ✓ Adequately concluded whether the program is likely to make improper payments (IPs) and unknown payments (UPs) above or below the statutory threshold. This requirement includes the adequacy of the program IP risk assessment when determining program compliance.<sup>5</sup>

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<sup>4</sup> This is also required by statute. 31 U.S.C. 3351(2).

<sup>5</sup> Per its FY 2021 FMFIA internal control risk assessment, CFTC assessed its major business cycles at a "low-to-moderate risk" level. It's testing of management controls surrounding the Fund Balance with Treasury and other cycles of payment origination were satisfactory. Key control activities were functioning effectively and continuously throughout the period under review. In addition, the contracted independent public accountant did not identify internal controls weaknesses related to outlays when conducting its FY 2021 AFR audit.



### *Cause*

CFTC's OFM indicated that due to its historical low improper payment risk, its continuous attention to internal controls, and its PIIA reporting discussions with the Office of Management and Budget, it believed a distinct payment integrity discussion was not meaningful for the FY 2021 AFR.

We inquired from CFTC's General Counsel whether OFM sought guidance concerning PIIA compliance. CFTC's General Counsel stated OFM did not seek legal advice from the legal division concerning CFTC's PIIA compliance and therefore has no position regarding whether the CFTC is out of compliance with the PIIA payment integrity reporting requirement. See [Appendix C](#) for General Counsel responses to our inquiry.

### *Effect*

Non-compliance with laws and regulations; Payment Integrity Information Act (PIIA) of 2019.

## CFTC Below Improper Payment Threshold

### *Condition:*

The OIG independently assessed improper payment risk for FY 2021 and concluded that the CFTC is a Phase 1 agency given payment risk is well below the established OMB threshold; improper payments greater than \$10 million and 1.5% of outlays.

### Statistical Analysis

The OIG conducted normality tests of CFTC's FY 2021 outlays or payments by object class.<sup>6</sup> The empirical rule states that 99.7% of data observed following a normal distribution lies within 3(z)<sup>7</sup> standard deviations of the mean. We initially grouped outliers into 2 categories and tested payment integrity thereafter.

### *Group 1 - Non-Payroll Results*

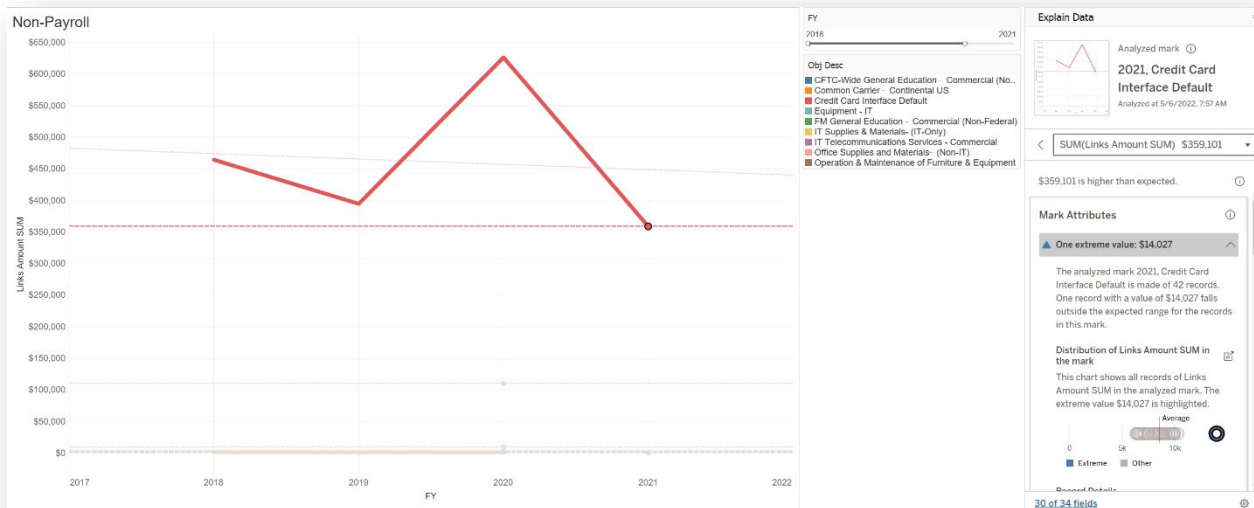
<i><b>Non-Payroll Object Class Descriptions</b></i>	<b>Outlier Count</b>	<b>Outlier Amount</b>
<i>Credit Card Interface Default</i>	42	\$ 359,100.97
<i>Operation &amp; Maintenance of Furniture &amp; Equipment</i>	1	\$ 873.90
<b><i>Grand Total</i></b>	<b>43</b>	<b>\$ 359,974.87</b>

Non-payroll outliers represented 0.28% of dollar value in this category of outlays. Payment integrity tests of extreme values confirmed that tested transactions were appropriately justified and approved. Figure 1 depicts and exemplifies outliers in this category.

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<sup>6</sup> Categories in a classification system that presents obligations by the items or services purchased by the Federal Government. Each specific object class is defined in OMB Circular A-11 Section 83.6.

<sup>7</sup> Z-scores offer analysts a way to compare data against a norm. Z-score results of zero indicate that the data point being analyzed is exactly average, situated among the norm. The higher the Z-score, the further from the norm the data can be considered to be.

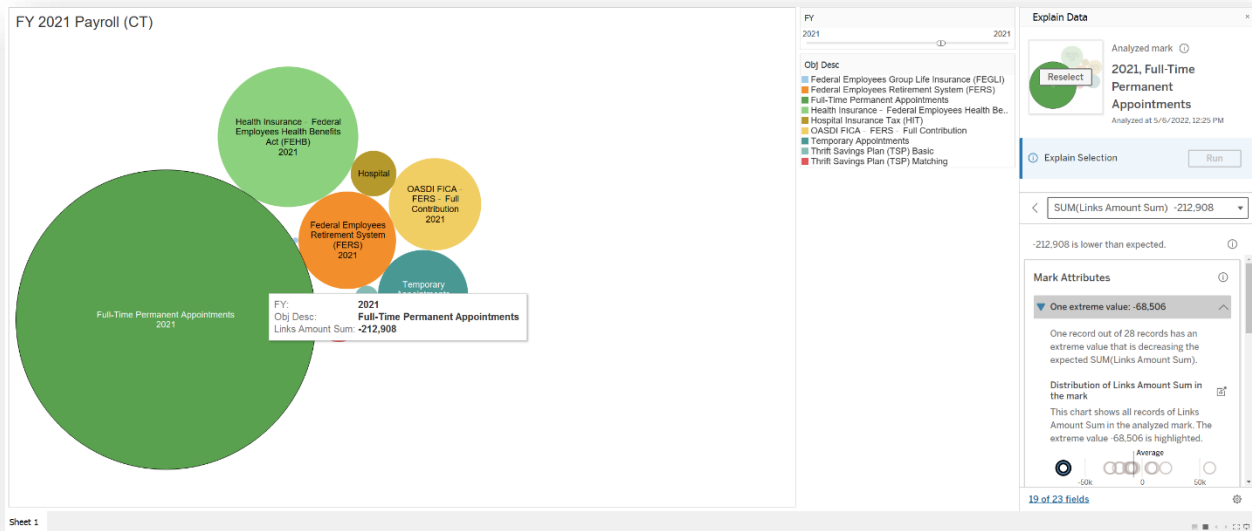


**Figure 1 – Non-Payroll Extreme Value Analysis**

The extreme value examined related to payment for federal executive training that was appropriately vetted and approved.

## Group 2 - Payroll Results

<b>Payroll Object Class Descriptions Correlating to CT Series</b>	<b>Outlier Count</b>	<b>Outlier Amount</b>
<i>Federal Employees Group Life Insurance (FEGLI)</i>	13	\$ (77.72)
<i>Federal Employees Retirement System (FERS)</i>	26	\$ (22,511.04)
<i>Full-Time Permanent Appointments</i>	28	\$ (212,907.77)
<i>Health Insurance – Federal Employees Health Benefits Act (FEHB)</i>	56	\$ (46,787.13)
<i>Hospital Insurance Tax (HIT)</i>	24	\$ (4,935.45)
<i>OASDI FICA – FERS – Full Contribution</i>	30	\$ (20,189.62)
<i>Temporary Appointments</i>	8	\$ 19,237.48
<i>Thrift Savings Plan (TSP) Basic</i>	28	\$ (1,277.66)
<i>Thrift Savings Plan (TSP) Matching</i>	26	\$ (5,279.38)
<b>Grand Total</b>	<b>239</b>	<b>\$ (294,728.29)</b>



**Figure 2. Payroll Extreme Value Analysis (CT Correlation)**

Payment integrity tests of extreme values confirmed that tested transactions were appropriately justified and approved. Figure 2 depicts and exemplifies payroll outliers that correlated to CT series (employment pay level). The extreme value examined was simply a reclassification of funds due to retroactive action to move an employee from the Division of Administration to the Division of Administration Information Technology Branch. No actual payment was made.

<b>Payroll Object Class Descriptions NOT Correlated to CT Series</b>	<b>Outlier Count</b>	<b>Outlier Amount</b>
<i>Holiday</i>	3	\$ (7,506.52)
<i>Civil Service Retirement System (CSRS) Agency Contribution</i>	3	\$ (1,105.14)
<i>Retention Allowance</i>	17	\$ (23,224.56)
<i>Student Loan Program</i>	1	\$ (50,000.00)
<i>Supplemental Dental</i>	185	\$ (46,119.27)
<i>Time-Off Awards</i>	15	\$ (76,719.46)
<b>Grand Total</b>	<b>224</b>	<b>\$ (204,674.95)</b>

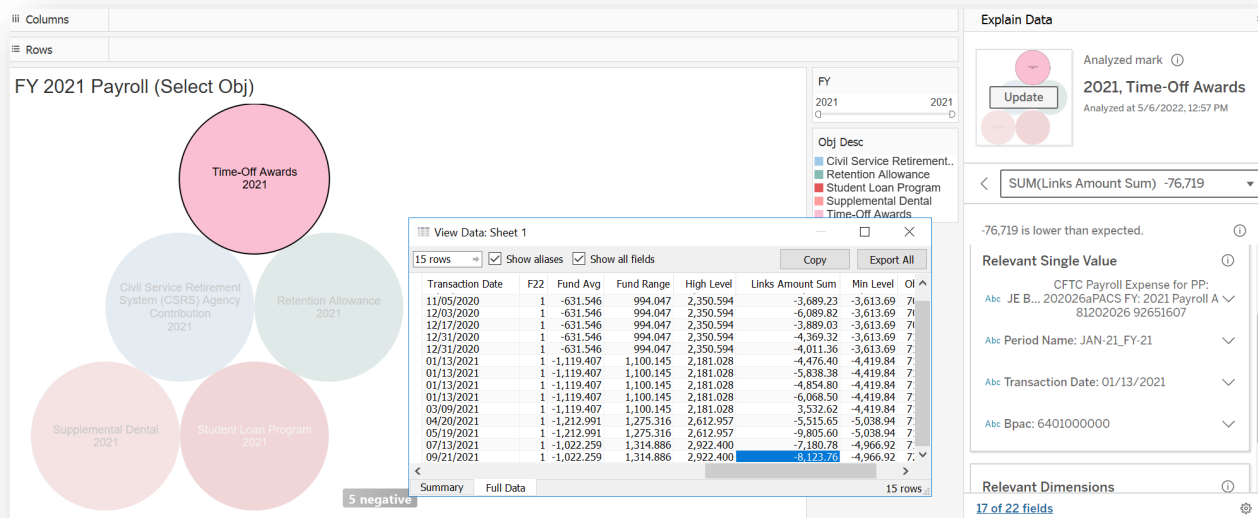


Figure 3. Payroll Extreme Value Analysis (NO CT Correlation)

Payment integrity tests of extreme values confirmed that tested transactions were appropriately justified and approved. Figure 3 depicts and exemplifies payroll outliers that we did not correlate to CT series (employment pay level). The extreme value examined relates to an employee who used a time off award in his final pay period with CFTC. Overall, payroll outliers represented 0.26% of the dollar value for these categories of outlays.

Given that none of outliers sampled were improper payments, we are 95% confident that **payment outliers which represent the risk of improper payments are no greater than \$202,108.54<sup>8</sup> or 0.06% of outlays for FY 2021;** well below thresholds set for improper payments. This is in-line with the absence of internal control deficiencies attested by CFTC's independent public auditor and internal control tests conducted by CFTC during FY 2021 that indicated low to moderate risk.

### Criteria

OMB-21-19, *Appendix C to OMB Circular A-123, Requirements for Payment Integrity Improvement*, calls for agencies to perform improper payment (IP) risk assessments and for the IGs to evaluate these assessments. Agencies should assess all programs with annual outlays greater than \$10,000,000 for risk at least once every three years. The purpose of a risk assessment is to

<sup>8</sup> (\$859,378.11 x 23.518%) at 3z or deviations.

determine whether the total annual IPs plus unknown payments (UPs) for a program are collectively likely to be above or below the statutory threshold for the given year. If the assessment determines that it is likely that the program's IPs plus the program's UPs are above the statutory threshold then, the following year the program should produce a statistically valid estimate of the programs IPs and UPs. If the IP risk assessment demonstrates that the program is not likely to make IPs and UPs above the statutory threshold, then the program will not produce a statistically valid estimate in the following year and instead will conduct another IP risk assessment in three years. Inspectors General determine whether the program is likely to make IPs and UPs above or below the statutory threshold.

### *Cause*

We attribute CFTC's Phase 1 status and low to moderate risk for improper payments to OFM's historical continuous attention to ensuring effective internal controls and financial risk management.

### *Effect*

CFTC is readily able to comply with PIIA reporting requirements in future AFRs.

## **Appendix B**

### **Background**

The Payment Integrity Information Act of 2019 (PIIA) was signed into law in March 2020 to decrease the amount of improper payments made by the United States Government. The PIIA changed the government-wide improper payment reporting requirements by repealing and replacing the Improper Payments Information Act of 2002, the Improper Payments Elimination and Recovery Act of 2010, the Improper Payments Elimination and Recovery Act of 2012, and the Fraud Reduction and Data Analytics Act of 2015. It adopted and modified certain requirements from the laws that it repealed or replaced and added new requirements. One of the primary changes made by the PIIA relates to new risk factors that are to be embedded into federal entities' improper payment risk assessments. These factors are:

- Similarities to other programs that have reported improper and unknown payment estimates or have been deemed susceptible to significant improper payments.
- Accuracy and reliability of improper and unknown payment estimates previously reported for the program or other indicators of potential susceptibility to improper payments.
- Whether the program lacks information or data systems to confirm eligibility or provide for other payment integrity needs.
- Risk of fraud as assessed by the federal entities under the Standards for Internal Control in the Federal Government issued by the Government Accountability Office, also referred to as the Green Book.

PIIA established responsibilities for the Office of Management and Budget (OMB) to issue implementation guidance and for establishing an interagency working group on payment integrity. The result from these initial efforts was OMB M-21-19, dated March 5, 2021, *Appendix C to OMB Circular A-123, Requirements for Payment Integrity Improvement*. This appendix focuses on developing a more comprehensive and meaningful set of requirements that reduces low-value activities, allows federal entities to spend more time performing root cause analyses of improper and unknown payments, balances risks and controls, and improves the ability to prevent future improper and unknown payments.

Each FY, the agency is responsible for ensuring it has met the requirements to achieve compliance with PIIA and the OIG is responsible for evaluating the agency to determine whether the agency is compliant with PIIA. The IG is responsible for submitting a report on that determination. The OIG review of the

accompanying materials to the FY2021 annual financial statement will be considered year 1 of a PIIA compliance review and all programs will consider the resulting OIG compliance report to be year 1 of the report for the purpose of implementing OMB guidance.

## **Scope and Methodology**

The objectives of this review were to:

1. Determine whether the CFTC is compliant with the PIIA Act of 2019 given that it did not report on payment integrity in its 2021 Financial Statements; and,
2. Perform an independent risk assessment of CFTC payments to determine whether CFTC is a Phase 1 or Phase 2 agency.

We conducted this review in accordance with Generally Accepted Government Auditing Standards (GAGAS).

To answer objective one, we:

- Interviewed and/or inquired with key officials in the OFM and Legal Division;
- Reviewed internal control cycle memo and tests of controls;
- Reviewed relevant AFRs; and
- Sought input from OIG Counsel

To answer objective two, we:

- Obtained and analyzed payment/accounting data for quality;
- Contracted analytic experts<sup>9</sup> to perform tests of normality by object class and/or CT series using SAS and Python tools;
- Selected and tested payment outliers set at 3z or standard deviations from averages;
- Examined extreme value using Tableau; and
- Projected test result to estimate maximum dollar potential for improper payments using RATS-STATS 2010 v.4. Single stage attribute appraisal results are depicted below:

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<sup>9</sup> We contracted with Analytica, an SBA Certified 8(a), HUBZone small business consulting and technology firm that specializes in public sector analytics & visualization requirements including data science solutions such as tests of normality.



Windows RAT-STATS Statistical Software Date: 5/7/2022      Single Stage Attribute Appraisal      Time: 11:59 REVIEW:PIIA 2019 OUTPUT FILE: C:\Users\mcas\OneDrive\Documents\FY 2021 PIIA.txt		
UNIVERSE SIZE		506
SAMPLE SIZE		11
CHARACTERISTIC(S) OF INTEREST		
QUANTITY IDENTIFIED IN SAMPLE		0
PROJECTED QUANTITY IN UNIVERSE		0
PERCENT		.000%
STANDARD ERROR		
PROJECTED QUANTITY		0
PERCENT		.000%
CONFIDENCE LIMITS		
80% CONFIDENCE LEVEL		
UPPER LIMIT - QUANTITY		68
PERCENT		13.439%
90% CONFIDENCE LEVEL		
UPPER LIMIT - QUANTITY		94
PERCENT		18.577%
95% CONFIDENCE LEVEL		
UPPER LIMIT - QUANTITY		119
PERCENT		23.518%
SINCE NO ITEMS HAVING THE CHARACTERISTIC(S) OF INTEREST WERE FOUND IN THE SAMPLE, THE PROGRAM HAS CALCULATED ONLY THE MAXIMUM NUMBER OF ITEMS HAVING THE CHARACTERISTIC(S) OF INTEREST IN THE UNIVERSE.		

**Figure 4 – Attribute Appraisal Results**

The population of outliers from our tests of normality was 506 payments. A 95% confidence level was used to estimate the upper limit of improper payments for FY 2021.

In reference to internal controls, management is responsible for the design, implementation, and operating effectiveness of the agency’s internal controls. A control deficiency in internal control exists when the design or operation of a control does not allow management or employees to prevent or detect and correct errors on a timely basis. A significant deficiency is a control deficiency or a combination of control deficiencies that adversely affects CFTC’s ability to initiate, authorize, record, process, or report financial data reliably. A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material error will not be prevented or detected.

We assessed applicable payment internal controls to determine the nature, timing, and extent of testing in accordance with GAO's Standards for Internal Control in the Federal Government. As part of our assessment, we reviewed fiscal year 2021 management assurance statements and risk assessments and determined that no significant deficiencies or material weaknesses were identified.

We assessed CFTC's payment reporting risk "low" because:

- FY 2019, 2020, and 2021 internal control tests performed by independent public accountants (IPA) contracted by OIG did not identify material or significant control deficiencies related to payments. Our review of the IPA's internal control work papers and test results also did not reveal control deficiencies for this matter.
- CFTC's accounting and payroll system service providers (U.S. Department of Transportation Enterprise Service Center and U.S. Department of Agriculture, National Finance Center, respectively) did not disclose material payment weaknesses in their independent audit reports.<sup>10</sup>
- Our independent analytic tests showed rates far below tolerable.

We conducted this review in accordance with Generally Accepted Government Auditing Standards (GAGAS). Systems data used for our review was sufficiently reliable to support the findings, conclusions and recommendations in our report.<sup>11</sup> In particular we analyzed system internal control reports and performed analysis of journal vouchers to assess the data quality of payment data used.

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<sup>10</sup> Independent Service Auditor's Report on National Finance Center's Description of Its Payroll and Personnel Systems and the Suitability of the Design and Operating Effectiveness of Its Controls for the period October 1, 2020 through June 30, 2021.  
Quality Control Review of the Independent Auditor's Report on DOT's Enterprise Services Center, October 1, 2020, through June 30, 2021.

<sup>11</sup> We considered the Government Accountability Office publication [Assessing the Reliability of Computer-Processed Data, GAO-09-680G \(July 2009\)](#) to assess the quality of data. We determined that payment data were sufficiently reliable for the purposes of this report.

## **Appendix C - General Counsel PIIA Responses**




Legal Division

### **U.S. COMMODITY FUTURES TRADING COMMISSION**

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John Einstman, Deputy General Counsel (General Law)

**DATE:** February 15, 2022

**SUBJECT:** Legal Division Response to OIG's January 25, 2022 Compliance Review Memorandum Entitled "Identification of conflict between the Payment Integrity Information Act of 2019 and applicable OMB Guidance; request that LD advise OFM"

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In your above-referenced memorandum, you requested that the Commission's Legal Division ("LD") address, "on CFTC letterhead," three bullet points related to your compliance review of the Agency's compliance with the Payment Integrity Information Act of 2019, 33 U.S.C. §§ 3351 *et seq.* ("PIIA"). After coordination with the Commission's Office of Financial Management ("OFM"), please find our responses set forth immediately below and attached:

- Did OFM seek legal advice from the Legal Division concerning PIIA compliance? If so, please provide us copies of the legal advice. If not, please advise both OFM and OIG on the Legal Division's position concerning CFTC compliance with the PIIA payment integrity reporting requirement, outlined above.

No, OFM did not seek legal advice from LD concerning CFTC PIIA compliance. LD therefore has no position regarding whether the CFTC is out of compliance with the PIIA payment integrity reporting requirement. At this time, we are unaware of any information suggesting that the agency is out of compliance. If your office is aware of any such information, we request that you provide it.

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- What base year is in effect for CFTC to comply with the PIIA payment integrity reporting requirement?

LD does not review either OMB Circulars or Agency responses to OMB Circulars unless specifically requested by OFM. Because OFM did not request LD review of either the OMB Circular at issue (A-136) or OFM's interpretation of PIIA requirements, OFM has requested that LD direct OIG to OFM concerning this question.

- Please provide all communications between CFTC and OMB concerning compliance with the PIIA's payment-integrity reporting requirement. If there is a specific point of contact at OMB we should contact, please provide contact information.

Attached please find all requested communications. OFM communicates with OMB concerning PIIA compliance via an OMB e-mail inbox that is not tied to a specific OMB employee.

If you would like to discuss this issue further please contact me at [rschwartz@cftc.gov](mailto:rschwartz@cftc.gov).

## **Appendix D - Management Comments**



Division of  
Administration

### **U.S. COMMODITY FUTURES TRADING COMMISSION**

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5003  
Facsimile: (202) 418-5530

### **MEMORANDUM**

**TO:** Miguel A. Castillo, Assistant Inspector General for Audits

**FROM:** Tomeka Gilbert, Acting Executive Director and Chief Administrative Officer, Division of Administration

Joel Mattingley,  
Chief Financial Officer

**DATE:** June 15, 2022

**SUBJECT:** Commodity Futures Trading Commission Management Response to the Office of Inspector General Compliance Review: Payment Integrity Information Act of 2019

Thank you for the opportunity to comment on the Office of the Inspector General's (OIG) draft report number 22-AU-03, Compliance Review: Payment Integrity Information Act of 2019 (PIIA). Management's comments to the recommendations described in the report are as follows:

#### **Recommendation #1:**

Include payment integrity analysis with relevant links and estimates in future AFRs as required by OMB M-21-19.

#### **Management Response:**

Management concurs with the recommendation and will include payment integrity reporting in its FY 2022 Agency Financial Report (AFR). PIIA reporting guidance in the Fiscal Year (FY) 2021 Office of Management and Budget (OMB) Circular A-136, *Financial Reporting Requirements*, was streamlined from prior years to reduce agency reporting burden and did not clearly articulate responsibilities for all federal entities (see below A-136 excerpt).

#### **II.4.5. Payment Integrity Information Act Reporting**

Information previously contained in this section that is not explicitly required below will be collected by OMB through the Annual Data Call and published on [PaymentAccuracy.gov](https://paymentaccuracy.gov). Agencies should consult the Annual Data Call guidance (<https://community.max.gov/x/HsVHg>) to determine which requirements apply to them. If an agency provides information to OMB through the Annual Data Call, then the agency must include the website hyperlink for [PaymentAccuracy.gov](https://paymentaccuracy.gov) in their AFR or PAR.

The Payment Integrity Information Act of 2019 (Pub. L. No. 116-117, 31 U.S.C. § 3352) requires that actions taken to address recovery auditor recommendations should be addressed in the AFR or PAR. If an agency has a recovery audit program and has received recommendations from their recovery auditors regarding actions that can be taken to prevent overpayments, the agency should report on actions taken.

FY 2021 A-136 PIIA reporting requirements were limited to reporting on recovery audit programs and providing a hyperlink to [PaymentAccuracy.gov](https://paymentaccuracy.gov) **only if** the agency provided information to OMB through the annual data call. CFTC did not receive an invitation to the annual PIIA data call from OMB for FY 2021 and does not have a recovery audit program; as such, CFTC did not include a section on PIIA compliance in its FY 2021 AFR.

CFTC followed OMB PIIA guidance in Appendix C to OMB Circular A-123, *Requirements for Payment Integrity Improvement*, to determine the agency's Phase I status for both of its programs. CFTC has a robust internal controls program and performed numerous internal control reviews and tests to ensure payment integrity. Furthermore, CFTC met with OMB on February 22, 2022, to discuss PIIA reporting requirements that apply to CFTC and expects to receive an invitation to the annual data call from OMB for FY 2022. During that discussion, CFTC also highlighted the conflicting requirements in the PIIA and A-136; as a result, the draft FY 2022 A-136 PIIA reporting requirements and emails from OMB to the PIIA listserv have been significantly clarified.

As noted in the OIG review, CFTC does not have a significant level of improper payments and continues to implement effective internal controls and review processes to prevent and detect improper payments.

#### **Recommendation #2:**

Seek counsel for interpreting general law matters such as PIIA compliance.

#### **Management Response:**

CFTC management seeks, and will continue to seek, general law interpretations on a variety of compliance issues, when deemed necessary. Management did not deem consultation with general law concerning the PIIA issue noted in the OIG review necessary because it was a result of OMB issuing financial reporting requirements that are not in sync with the PIIA. OMB has acknowledged the discrepancy and has worked to clarify the requirements surrounding PIIA reporting.

Sincerely,

**TOMEKA GILBERT** Digitally signed by TOMEKA GILBERT  
Date: 2022.06.15 13:30:43 -04'00'

Tomeka Gilbert  
Acting Executive Director and Chief Administrative Officer

Date

**JOEL MATTINGLEY** Digitally signed by JOEL MATTINGLEY  
Date: 2022.06.15 11:42:45 -04'00'

Joel Mattingley  
Chief Financial Officer

Date

Cc:

David Gillers  
Rob Schwartz  
Natasha Coats  
Nora Flood  
Christopher Lucas  
Meghan Tente  
John Rogers  
Keith Ingram  
Roy Lavik  
Rudith Ringle