Audit Report

OIG-13-034

The Department of the Treasury Was Not in Compliance With the Improper Payments Elimination and Recovery Act for Fiscal Year 2012

March 15, 2013

Office of Inspector General

Department of the Treasury

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Appendices

Abbreviations

AFR	Agency Financial Report
DO	Departmental Offices
EITC	Earned Income Tax Credit
FY	Fiscal Year
IPERA	Improper Payments Elimination and Recovery Act of 2010
IPIA	Improper Payments Information Act of 2002
IRS	Internal Revenue Service
OIG	Office of Inspector General
OMB	Office of Management and Budget
PAR	Performance and Accountability Report
RCG	Risk and Control Group
TIGTA	Treasury Inspector General for Tax Administration

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March 15, 2013

Nani A. Coloretti
Assistant Secretary for Management

This report presents the results of our audit of the Department of the Treasury's (Treasury) compliance with Public Law 111-204, Improper Payments Elimination and Recovery Act of 2010 (IPERA). IPERA was enacted to help Federal agencies strengthen the framework for reducing and reporting improper payments. IPERA amended the Improper Payments Information Act of 2002 (IPIA) and expanded requirements for improper payment reporting and recovering overpayments across a broad range of federal programs.

This mandated audit requires that we assess and report on Treasury's compliance with improper payment requirements. The objectives, scope, and methodology of our audit are described in appendix 1.

This report incorporates the results of the Treasury Inspector General for Tax Administration's (TIGTA) assessment of the Internal Revenue Service's (IRS) compliance with IPERA. TIGTA issued its report on February 25, 2013. That report is included as appendix 2 of this report. The results of our audit, insofar as they relate to IRS, are based solely on TIGTA's report.

Results in Brief

Treasury was not in compliance with IPERA for Fiscal Year (FY) 2012 due to IRS's Earned Income Tax Credit (EITC) improper payments reporting deficiencies reported by TIGTA. Specifically, IRS did not publish annual EITC improper payment reduction targets and has not reported an improper payment rate of less than 10 percent. This is the second consecutive year we have determined that Treasury is not in compliance with IPERA due to IRS's EITC improper payments reporting deficiencies.

In accordance with IPERA, since we have determined that Treasury was not in compliance for 2 consecutive fiscal years for the same program, the Director of the Office of Management and Budget (OMB) will review the EITC program and determine if additional funding will help Treasury come into compliance. If the Director of OMB determines that additional funding will help Treasury come into compliance, Treasury will need to obligate additional funding to intensified compliance efforts.

Our audit also identified the need for Treasury to improve its IPERA reporting. Specifically, Treasury's corrective action plan to become compliant with IPERA did not address IRS's EITC improper payments reporting deficiencies and we noted errors and omissions in Treasury's payment recapture audit reporting.

TIGTA also reported that (1) Information provided to Treasury was incomplete in that information related to certain compliance activities was omitted from reporting in Treasury's FY 2012 Agency Financial Report (AFR) and IRS's estimated EITC improper payment rate did not include an estimate of EITC underpayments, and (2) IRS faces significant challenges to becoming compliant with IPERA related to the process of assessing improper payment risk for IRS revenue program funds and the characteristics of the EITC program.

We are making three recommendations in this report to address our findings. In its written response to this report, which is included as appendix 3, Treasury agreed with our recommendations and provided a description of its planned corrective actions.

Background

The Improper Payments Elimination and Recovery Act of 2010

IPERA amended IPIA by strengthening agency reporting requirements. It also requires increased agency efforts by expanding the types of payments that should be reviewed and lowering the threshold of annual outlays that requires agencies to conduct payment recapture audit programs.

On April 14, 2011, OMB issued Revised Parts I and II to Appendix C, "Requirements for Effective Measurement and Remediation of Improper Payments," of OMB Circular No. A-123, Management's Responsibility for Internal Control, on the implementation of IPERA (OMB Circular No. A-123, Appendix C). This guidance provided federal agencies with the required steps to follow in (1) identifying and reporting on improper payments and (2) performing and reporting on payment recapture audits.

To determine compliance with IPERA and OMB guidance, we are required to review the AFR and any accompanying information to assess whether Treasury has:

- Published an AFR for the most recent fiscal year and posted that report and any accompanying materials required by OMB on Treasury's website;
- Conducted a program specific risk assessment for each program or activity that conforms with 31 U.S.C. §3321, if required;
- Published improper payment estimates for all programs and activities identified as susceptible to significant improper payments under its risk assessment, if required;
- Published programmatic corrective action plans in the AFR, if required;
- Published, and has met, annual reduction targets for each program assessed to be at risk and measured for improper payments;
- 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 AFR; and
- Reported information on its efforts to recapture improper payments.

If an agency does not meet one or more of these requirements, then it is not compliant with IPERA.

Improper Payment Risk Assessment

Treasury's Risk and Control Group (RCG), under the Deputy Chief Financial Officer, issued *Treasury-Wide Guidance for the FY 2012*

Implementation of Circular A-123, Appendix C, Requirement for the Effective Measurement and Remediation of Improper Payments (Treasury's IPERA Guidance) to all Treasury bureaus and Departmental Offices (DO) subcomponents (hereafter we refer to bureaus and DO subcomponents collectively as "components"). RCG identified the programs for which components were required to assess the risk of improper payment. Treasury components used the Improper Payments Elimination and Recovery Risk Assessment Questionnaire for FY 2012 developed by RCG to assess the level of risk for each program identified. Each component was to provide the results and documentation for all risk assessments to RCG. For any program identified as having a high risk for improper payment, the responsible component was also required to provide the following information for inclusion in the AFR:

- The rate and amount of improper payment;
- The root causes of improper payments;
- Actions taken to address the root causes;
- Annual improper payment reduction targets; and
- A discussion of any limitations to the component's ability to reduce improper payments.

For FY 2012, Treasury identified the EITC, administered by IRS, as its only high risk program. Treasury provided ongoing and planned corrective actions to reduce the EITC's improper payment rate in its FY 2012 AFR.

Payment Recapture Audits

IPERA requires agencies to conduct payment recapture audits (also known as recovery audits) for each program and activity that expends $1 million or more annually, if conducting such audits would be cost-effective. A payment recapture audit is a review and analysis of an agency's or program's accounting and financial records, supporting documentation, and other pertinent information supporting its payments, that is specifically designed to identify overpayments. Agencies are required to have a cost-effective program of internal control to prevent, detect, and recover overpayments.

Treasury's IPERA Guidance required each component to complete a worksheet providing a consistent reporting format that includes information on the component's payment recapture audits. The worksheets were to be submitted to RCG for review and the results were then consolidated and reported in the AFR.

Findings and Recommendations

Finding 1 Treasury's Corrective Action Plan to Become Compliant with IPERA Was Not Complete

In our FY 2011 audit of Treasury's compliance with IPERA, we concluded that Treasury was not in compliance with IPERA due to IRS's EITC improper payments reporting deficiencies reported by TIGTA. In accordance with OMB Circular No. A-123, Appendix C, Treasury was to submit, within 90 days of the determination of non-compliance, a plan to Congress describing the actions that it will take to come into compliance with IPERA.

The plan was to include:

- Measurable milestones to be accomplished in order to achieve compliance for each program or activity;
- The designation of a senior agency official who shall be accountable for the progress of the agency in coming into compliance for each program or activity; and
- The establishment of an accountability mechanism, such as a performance agreement, with appropriate incentives and consequences tied to the success of the senior agency official in leading agency efforts to achieve compliance for each program and activity.

On June 11, 2012, Treasury submitted its plan to Congress; however, the plan did not address the non-compliance with IPERA due to IRS's EITC improper payments reporting deficiencies. The plan only addressed the findings and recommendations regarding reporting on payment recapture audits.

According to Treasury officials, its plan to Congress did not address IRS's EITC improper payments reporting deficiencies because Treasury believed that by reporting on it in its AFR submission, the OMB Circular No. A-123, Appendix C requirement was satisfied. We discussed Treasury's position with OMB staff and were told that Treasury's reporting in its AFR did not satisfy the IPERA reporting requirement.

Recommendation

We recommend that the Assistant Secretary for Management ensure that Treasury submits a comprehensive plan to Congress that includes a description of the corrective actions Treasury will take to remediate non-compliance with IPERA due to IRS's EITC improper payments reporting deficiencies.

Management Response

Treasury stated that it is working with OMB to require EITC annual improper payment estimate updates instead of reduction targets. IRS also plans to work with OMB to develop supplemental measures for EITC that gauge the impact of compliance and outreach efforts in lieu of developing error reduction targets. According to Treasury, IRS currently has corrective actions in place to reduce the improper payment rate, but there are numerous barriers, including authentication errors, verification errors, the complexity of the tax law, and the structure of the EITC. These actions will help ensure that Treasury submits a comprehensive plan to Congress.

OIG Comment

Treasury's commitment to submit a comprehensive plan to Congress generally meets the intent of our recommendation. It must be kept in mind that the contemplated change to report EITC annual improper payment estimate updates instead of reduction targets is a deviation from IPERA. TIGTA's report, included as appendix 2, provides additional context as to the challenges faced by IRS to becoming compliant with IPERA.

Finding 2 Payment Recapture Audit Reporting Needs Improvement

During our review of Treasury's payment recapture audit reporting in the AFR, we identified the following:

- *Payment Recapture Audit Reporting* table - The improper payments amount recovered in FY 2012 was understated. The calculation of the improper payments amount recovered in FY 2012 did not include the recapture of improper payments before a receivable was set up for 7 of the 14 sampled components tested, totaling $111,000.
- *Disposition of Recaptured Funds* table – The table did not include the disposition of all funds recaptured in FY 2012. Five (5) of the 14 sampled components tested did not report the disposition of $220,000 in unexpired recaptured funds when reporting data to RCG.
- Treasury did not report Treasury Managed Accounts administered by FMS as an activity it had determined would not be cost-effective to conduct a payment recapture audit program nor did it provide the related justification and analysis supporting this decision.

OMB Circular No. A-123, Appendix C, requires that agencies report annually on their payment recapture audit program in their Performance and Accountability Report (PAR)/AFR. This reporting is to include improper payment amounts recovered in the current year as well as a summary of how recaptured funds were disposed of.

OMB Circular No. A-123, Appendix C, states "the agency shall report in its annual PAR or AFR: (1) a list of programs and activities where it has determined conducting a payment recapture audit program would not be cost-effective; and (2) a description of the justifications and analysis that it used to determine that conducting a payment recapture audit program for these programs and activities was not cost-effective."

The payment recapture audit reporting deficiencies identified above resulted from the misinterpretation or misunderstanding of reporting requirements by Treasury and its components. As a result, the FY 2012 improper payments amounts recovered, disposition of recaptured funds, and programs for which Treasury determined were not cost-effective to perform a payment recapture audit were not reported completely and accurately in accordance with OMB guidance.

Recommendations

We recommend that the Assistant Secretary for Management:

1. Ensure that the current year total amounts of improper payments recovered and dispositions of recaptured funds are accurately reported in the PAR/AFR in accordance with OMB requirements.

2. Ensure that Treasury reports in its PAR/AFR, all programs and activities where it has determined conducting a payment recapture audit program would not be cost-effective and a description of the justification and analysis supporting the decision.

Management Response

Treasury stated that it plans to enhance its annual IPERA guidance and oversight activities to ensure that required improper payments information is completely and accurately aggregated and reported in the PAR/AFR.

OIG Comment

Treasury's planned actions satisfy the intent of the recommendations.

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We appreciate the courtesies and cooperation extended to our staff during this audit. Should you have any questions, you may contact me at (202) 927-5400, or Mike Fitzgerald, Director, Financial Audit at (202) 927-5789. Major contributors to this report are listed in appendix 4.

/s/
Marla A. Freedman
Assistant Inspector General for Audit

The objective of our audit was to determine Treasury's compliance with IPERA; OMB Circular No. A-123, Appendix C; and OMB Circular No. A-136, Financial Reporting Requirements. Our scope did not include the review of programs and activities administered by IRS. TIGTA is responsible for the audit of IRS's compliance with IPERA. TIGTA's scope was limited to an assessment of EITC information that IRS provided for inclusion in Treasury's AFR. EITC was the only program identified by the IRS for improper payment reporting.

To accomplish our objective, we reviewed applicable laws, OMB guidance, and Treasury-wide guidance related to IPERA; interviewed key DO and component personnel; and performed testing of Treasury's risk assessment and payment recapture audits. We reviewed the AFR to determine if Treasury complied with the reporting requirements of IPERA. We conducted our fieldwork in Washington, DC, from August 2012 to February 2013.

To review Treasury's risk assessment process, we randomly selected a sample of 27 of the 66 non-IRS programs identified by Treasury for risk assessment. To determine the reasonableness and accuracy of the information reported and compliance with the applicable guidance for the sample, we reviewed the program risk assessments and conducted interviews of personnel involved in their preparation and review.

To review the payment recapture audit program, we randomly selected a sample of 14 of the 20 non-IRS components. To determine the reasonableness and accuracy of the information reported, and compliance with the applicable guidance for the sample, we reviewed the components' submissions and conducted interviews with component personnel, as well as reviewed supporting documentation.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

The Internal Revenue Service Was Not in Compliance With All Requirements of the Improper Payments Elimination and Recovery Act for Fiscal Year 2012

February 25, 2013

Reference Number: 2013-40-024

Phone Number | 202-622-6500
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HIGHLIGHTS

THE INTERNAL REVENUE SERVICE WAS NOT IN COMPLIANCE WITH ALL REQUIREMENTS OF THE IMPROPER PAYMENTS ELIMINATION AND RECOVERY ACT FOR FISCAL YEAR 2012

Highlights

Final Report issued on February 25, 2013

Highlights of Reference Number: 2013-40-024 to the Internal Revenue Service Chief Financial Officer.

IMPACT ON TAXPAYERS

The Improper Payments Elimination and Recovery Act (IPERA) of 2010 increased agency accountability for reducing improper payments in Federal programs. The only program the IRS has identified for improper payment reporting is the Earned Income Tax Credit (EITC) Program. The IRS estimates that 21 to 25 percent of EITC payments were issued improperly in Fiscal Year 2012. The dollar value of these improper payments was estimated to be between $11.6 billion and $13.6 billion.

WHY TIGTA DID THE AUDIT

This audit was initiated because the IPERA requires TIGTA to assess the IRS's compliance with improper payment requirements. The objective of this review was to assess the IRS's compliance with the IPERA. The scope of this review was limited to an assessment of EITC information the IRS provided for inclusion in the *Department of the Treasury Agency Financial Report Fiscal Year 2012*.

WHAT TIGTA FOUND

The Department of the Treasury identifies the programs for which the IRS must assess the risk of improper payments. The IRS compiles the required information and forwards it to the Department of the Treasury for inclusion in the Department's agency financial report.

TIGTA's analysis of the information the IRS provided to the Department of the Treasury showed that the IRS is not in compliance with all IPERA requirements. Specifically, the IRS has not established annual EITC improper payment reduction targets and has not reported an improper payment rate of less than 10 percent. This is the second consecutive year that the IRS is not in compliance with the IPERA.

Although the IRS has implemented a number of programs over the years to address EITC improper payments, the IRS faces significant challenges to becoming compliant with the IPERA. Specifically, the process the Department of the Treasury uses to assess the risk of improper payments within its bureaus does not effectively assess the risk of improper payments in tax administration. In addition, the ever-changing population of EITC claimants makes it difficult for the IRS to gain lasting improvements in EITC compliance through outreach, education, and enforcement.

WHAT TIGTA RECOMMENDED

TIGTA made no recommendations in this report.

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

February 25, 2013

MEMORANDUM FOR CHIEF FINANCIAL OFFICER

FROM: Michael E. McKenney
Acting Deputy Inspector General for Audit

SUBJECT: Final Audit Report – The Internal Revenue Service Was Not in Compliance With All Requirements of the Improper Payments Elimination and Recovery Act for Fiscal Year 2012 (Audit # 201240045)

The report presents the results of our review to assess the Internal Revenue Service's (IRS) compliance with the Improper Payments Elimination and Recovery Act (IPERA) of 2010.[1] The IPERA requires the Treasury Inspector General for Tax Administration to review annually the IRS's compliance with the IPERA reporting requirements. This audit is included in our Fiscal Year 2013 Annual Audit Plan and addresses the major management challenge of Fraudulent Claims and Improper Payments.

Management's complete response to the draft report is included as Appendix V.

Copies of this report are also being sent to the IRS managers affected by the report findings. If you have any questions, please contact me or Augusta R. Cook, Acting Assistant Inspector General for Audit (Returns Processing and Account Services).

[1] Pub. L. 111-204.

The Internal Revenue Service Was Not in Compliance With All Requirements of the Improper Payments Elimination and Recovery Act for Fiscal Year 2012

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The Internal Revenue Service Was Not in Compliance With All Requirements of the Improper Payments Elimination and Recovery Act for Fiscal Year 2012

Abbreviations

EITC	Earned Income Tax Credit
IPERA	Improper Payments Elimination and Recovery Act
IRS	Internal Revenue Service
NRP	National Research Program
TIGTA	Treasury Inspector General for Tax Administration

The Internal Revenue Service Was Not in Compliance With All Requirements of the Improper Payments Elimination and Recovery Act for Fiscal Year 2012

Background

Improper payments by Federal Government agencies have been an issue for many years, and various ways have been put forth to identify, measure, and reduce them. These include laws specifically addressing improper payments, an executive order, and guidance by certain oversight agencies, such as the Office of Management and Budget. In addition, agency Inspectors General serve a role by evaluating agency information related to improper payments.

The Improper Payments Information Act of 2002[1] requires Federal agencies, including the Internal Revenue Service (IRS), to estimate the amount of improper payments made each year. The agencies must report to Congress on the causes of and the steps taken to reduce improper payments and address whether they have the information systems and other infrastructure needed to reduce improper payments. Agencies must also describe the steps taken to ensure that managers are held accountable for reducing improper payments.

The Improper Payments Elimination and Recovery Act of 2010 amends the Improper Payments Information Act of 2002

On July 22, 2010, President Obama signed into law the Improper Payments Elimination and Recovery Act (IPERA) of 2010.[2] The IPERA amends the Improper Payments Information Act of 2002 by redefining the definition of "significant improper payments" and strengthening agency reporting requirements. The IPERA requires the Treasury Inspector General for Tax Administration (TIGTA) to review annually the IRS's compliance with the IPERA reporting requirements. Our evaluation of the IRS's compliance with the IPERA is used by the Department of the Treasury Office of Inspector General[3] when determining the Department of the Treasury's compliance with the IPERA.

The IPERA process to identify IRS programs for improper payment risk assessment

The Department of the Treasury identifies the programs for which the IRS must assess the risk of improper payments. The IRS used an Improper Payments Elimination and Recovery Risk Assessment Questionnaire for Fiscal Year[4] 2012 (the questionnaire) developed by the Department of the Treasury to assess the level of risk within each of the identified programs.

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[1] Pub. L. No. 107-300, 116 Stat. 2350.
[2] Pub. L. 111-204.
[3] The office that conducts independent audits, investigations, and reviews to help the Department of the Treasury accomplish its mission; improve its programs and operations; promote economy, efficiency, and effectiveness; and prevent and detect fraud and abuse.
[4] A 12-consecutive-month period ending on the last day of any month, except December. The Federal Government's fiscal year begins on October 1 and ends on September 30.

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The questionnaire assigns a risk score to each program based on the IRS's response to the questionnaire. The level of risk for improper payments for the program is then based on risk score ranges established by the Department of the Treasury. For example, a risk score of 0 to 11 is considered low risk; 12 to 28, medium risk; and 29 and greater, high risk. The IRS is required to forward the results and documentation for all risk assessments to the Department of the Treasury. Appendix IV provides a list of the IRS programs the Department of the Treasury identified for an improper payment risk assessment for Fiscal Year 2012.

For any program identified as having a high risk for improper payments, the IRS must provide the following information to the Department of the Treasury for inclusion in the Department's annual agency financial report:

- The rate and amount of improper payments.
- The root causes of the improper payments.
- Actions taken to address the root causes.
- Annual improper payment reduction targets.
- A discussion of any limitations to the IRS's ability to reduce improper payments.

During the course of this review, we were provided with documentation showing risk assessments were performed for each of the programs that the Department of the Treasury required the IRS to assess. The Earned Income Tax Credit (EITC) has previously been declared a high-risk program by the Office of Management and Budget; therefore, no risk assessment is required to be prepared for it. The EITC is currently the only IRS high-risk program and the only one with information included in the agency financial report.

In January 2013, we reported that the process and tools used to assess IRS programs did not provide a reliable assessment of the risk of improper payments.[5] IRS management agreed with the recommendations in that report.

Executive Order 13520 also affects improper payment reporting

In addition to the IPERA, Executive Order 13520, signed by President Obama on November 20, 2009, creates another requirement to address improper payments and increases Federal agencies' accountability for reducing them while continuing to ensure that Federal programs service and provide access to their intended beneficiaries. The order requires Federal agencies to provide their agency Inspector General detailed information on efforts to identify and reduce the number of improper payments in Federal programs with the highest dollar value of

[5] TIGTA, Ref. No. 2013-40-015, *Improper Payments Elimination and Recovery Act Risk Assessments of Revenue Programs Are Unreliable* (Jan. 2013).

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improper payments. TIGTA's evaluation of this information is published in a separate report, the most recent being in Calendar Year 2011.[6]

The IRS uses a statistically valid method to estimate EITC improper payments based on compliance information

The IRS uses the National Research Program (NRP) as the primary source of data to estimate the annual EITC improper payment rate. The NRP provides the IRS with compliance information that is statistically representative of the taxpayer population. Updated estimates of taxpayer compliance are computed for each tax year.[7] The IRS uses each tax year's NRP results to update the EITC improper payment rate.

Although the NRP process results in a more current estimate of the accuracy of EITC claims than previous methods, the estimated improper payment rate for a given fiscal year is not based on current year data. Because of the time it takes to complete the annual NRP, the IRS's annual estimate is based on data that are approximately three years old. For example, EITC improper payment estimates for Fiscal Year 2012 are based on information from Tax Year 2008 tax returns that were processed in Calendar Year 2009.

This review was performed at the IRS Headquarters in Washington, D.C., in the Office of Research, Analysis, and Statistics and in the Office of the Chief Financial Officer during the period September 2012 through January 2013. The scope of this review was limited to verifying that required risk assessment questionnaires were completed and that the EITC information the IRS provided for inclusion in the *Department of the Treasury Agency Financial Report Fiscal Year 2012* was accurate. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit 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 findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

[6] TIGTA, Ref. No. 2011-40-023, *Reduction Targets and Strategies Have Not Been Established to Reduce the Billions of Dollars in Improper Earned Income Tax Credit Payments Each Year* (Feb. 2011).
[7] A 12-month accounting period for keeping records on income and expenses used as the basis for calculating the annual taxes due. For most individual taxpayers, the tax year is synonymous with the calendar year.

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Results of Review

The Internal Revenue Service Was Not in Compliance With All Improper Payments Elimination and Recovery Act Requirements for a Second Consecutive Year

The IRS did not provide all required IPERA information to the Department of the Treasury for inclusion in the *Department of the Treasury Agency Financial Report Fiscal Year 2012*. For the second consecutive year, the IRS did not publish annual reduction targets or report an improper payment rate of less than 10 percent for the EITC. Figure 1 provides a summary of our evaluation of IRS compliance with the IPERA.

Figure 1: IRS Compliance With Improper Payment Requirements for the EITC Program

IPERA Requirement	Provided by the IRS
Conduct a program-specific risk assessment for each program or activity that conforms with Section 3321 of Title 31 U.S.C.	Yes
Publish a programmatic corrective action plan for the EITC.	Yes
Publish an improper payment estimate for the EITC.	Yes
Publish annual reduction targets for the EITC and discuss progress toward meeting those targets.	No
Report an improper payment rate of less than 10 percent for the EITC.	No
Report on efforts to recapture EITC improper payments.	Yes

Source: TIGTA's review of IRS EITC information provided to the Department of the Treasury for inclusion in the Department of the Treasury Agency Financial Report Fiscal Year 2012 issued on November 15, 2012.

TIGTA's report on IRS compliance with the IPERA is incorporated into the Department of the Treasury Office of Inspector General's annual assessment of the Department of the Treasury's compliance with the IPERA. Fiscal Year 2011 was the first year Inspectors General were required to assess agencies' compliance with the IPERA. In March 2012, the Treasury Inspector

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General reported that the Department of the Treasury was not in compliance with the IPERA, primarily because of the EITC.[8]

Noncompliance with IPERA reporting requirements increases the risk that the IRS will not significantly reduce EITC improper payments

As the following chart illustrates, the IRS has made little improvement in reducing EITC improper payments since being required to report estimates of these payments to Congress. The IRS has previously acknowledged that further reductions in the EITC error rate will be difficult to achieve. Figure 2 presents the IRS's estimated EITC improper payments for Fiscal Year 2003 through Fiscal Year 2012.

Figure 2: EITC Improper Payments for Fiscal Years 2003 to 2012

Fiscal Year	Minimum Improper Payments[9] Percentage	Maximum Improper Payments Percentage	Minimum Improper Payments Dollars (Billions)	Maximum Improper Payments Dollars (Billions)
2003	25%	30%	$9.5	$11.5
2004	22%	27%	$8.6	$10.7
2005	23%	28%	$9.6	$11.4
2006	23%	28%	$9.8	$11.6
2007	23%	28%	$10.4	$12.3
2008	23%	28%	$11.1	$13.1
2009	23%	28%	$11.2	$13.3
2010	24%	29%	$15.3	$18.4
2011	21%	26%	$13.7	$16.7
2012	21%	25%	$11.6	$13.6
Total			$110.8	$132.6

Source: Department of the Treasury Performance and Accountability Reports for Fiscal Year 2003 through Fiscal Year 2010 and the Fiscal Year 2011 and Fiscal Year 2012 Agency Financial Reports.

[8] Department of the Treasury Office of Inspector General, Ref. No. OIG-12-044, *The Department of the Treasury Was Not in Compliance With the Improper Payments Elimination and Recovery Act for Fiscal Year 2011* (Mar. 2012).
[9] For Fiscal Year 2005 through Fiscal Year 2009, the IRS computed the minimum and maximum improper payment rates (referred to as the upper and lower bounds) using different sets of assumptions concerning the compliance of EITC claimants who fail to show up for the NRP audit.

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Although the IRS reported a slightly lower EITC improper payment amount for Fiscal Year 2012, this decrease cannot necessarily be attributed to a reduction in the amount of EITC improper payments. A number of factors can cause the improper payment rate and resulting dollar estimate to fluctuate from year to year. For example, after Fiscal Year 2009, the IRS changed the way it estimated EITC improper payments.

In Fiscal Year 2010, using data gathered annually through the NRP, the IRS began using a new statistical methodology for computing the improper payment amount. The annual sample along with the new methodology allows the IRS to calculate a point estimate for the improper payment amount with a 3 percent precision and a 90 percent confidence rate as required by the IPERA. This new methodology accounts for the taxpayers who do not respond to the notification of audit through the application of sophisticated statistical formulas and techniques rather than the previous assumptions that were used.

In addition, legislative changes to the EITC and changes in the economy also directly affect the number and amount of EITC claims filed each year. The estimated improper payment rate and resulting dollar estimate will increase or decrease as the number of EITC claims received in a given tax year increases or decreases.

Developing specific EITC improper payment reduction targets continues to be problematic

Similar to last year, the IRS did not provide the Department of the Treasury or TIGTA with quantifiable improper payment reduction targets for the EITC as required by the IPERA. IRS management's response to TIGTA's Fiscal Year 2011 IPERA report stated:

> *. . . we are continuing to implement our return preparer initiative aimed at substantially reducing erroneous EITC payments. As previously noted, FY* [Fiscal Year] *2011 was the first year of a three-year ramp-up of this initiative, and we expect to have a baseline against which we can set meaningful reduction targets after the program is fully established by FY 2014.*

While beneficial, it is unknown what effect the Return Preparer Initiative will have on overall EITC improper payments or when these projected benefits will be realized. On January 18, 2013, the Federal Court enjoined the IRS from enforcing the regulatory requirements for registered tax return preparers. On January 23, 2013, the IRS filed a motion to suspend the injunction pending appeal.

IRS management stated that they do not plan to create specific and meaningful EITC improper payment reduction targets for the immediate future. As a result, the IRS and the Department of the Treasury will continue to not comply with the IPERA. According to the IPERA, continued noncompliance will result in additional reporting requirements as well as a review of Department of the Treasury, and potentially IRS, funding by the Office of Management and Budget.

The Internal Revenue Service Was Not in Compliance With All Requirements of the Improper Payments Elimination and Recovery Act for Fiscal Year 2012

Information provided to the Department of the Treasury was incomplete

Our review also identified two other areas of concern. These two concerns do not materially affect the IRS's compliance with the IPERA.

- Information in the *Department of the Treasury Agency Financial Report Fiscal Year 2012* related to compliance activities was incomplete.
- The IRS's estimated EITC improper payment rate still does not include EITC underpayments.

The *Department of the Treasury Agency Financial Report Fiscal Year 2012* contains a table that lists various IRS activities to address improper payments, such as Examination Closures (audits) and Document Matching.[10] This table omitted the IRS's estimated Fiscal Year 2013 activities from the seven-year total. Accordingly, Examination Closures cases were understated by almost half a million cases and Document Matching cases were understated by almost one million cases. These omissions were caused by human error when the IRS created the chart information. The omission of the Fiscal Year 2013 estimates does not affect the IRS's compliance with the IPERA.

In addition, the IRS improper payment rate still does not include an estimate of EITC underpayments. The IPERA states that reported improper payment estimates should include instances of underpayments, *i.e.*, the recipients received less than they were entitled to receive, as well as overpayments, *i.e.*, the recipients received more than they were entitled to receive. In response to our previous report evaluating the IRS's compliance with Executive Order 13520,[11] the IRS agreed to assess the impact of EITC underpayments on the improper payment rate. The IRS indicated in its Fiscal Year 2012 IPERA reporting that EITC underpayments "do not appear with sufficient frequency in the statistically valid test data to have a measurable effect on the estimate."

Based on materiality, it is reasonable to omit EITC underpayments when computing the Fiscal Year 2012 improper payment rate. However, the IRS should continue to evaluate the significance of EITC underpayments annually and ensure that underpayments are included in its annual estimate of the EITC improper payment rate if warranted.

[10] The IRS's Automated Underreporter Program matches items reported on an individual's income tax return to information supplied to the IRS from outside sources (such as employers, banks, and credit unions) to determine if the tax return reflected correct amounts.
[11] TIGTA, Ref. No. 2011-40-023, *Reduction Targets and Strategies Have Not Been Established to Reduce the Billions of Dollars in Improper Earned Income Tax Credit Payments Each Year* (Feb. 2011).

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The Internal Revenue Service Was Not in Compliance With All Requirements of the Improper Payments Elimination and Recovery Act for Fiscal Year 2012

The Internal Revenue Service Faces Significant Challenges to Becoming Compliant With the Improper Payments Elimination and Recovery Act

The IRS faces significant and unique challenges in trying to become compliant with the IPERA. In January 2013, TIGTA reported that the process used in Fiscal Year 2011 to determine which IRS programs have a high risk of improper payments did not effectively measure risk.[12] Also, the ever-changing population of EITC claimants creates challenges for the IRS to administer the EITC while minimizing improper payments.

The process used to determine program risk can be improved

As explained previously, the starting point for complying with the IPERA is for agencies to assess the risk for improper payments in their programs. The Department of the Treasury administers the annual improper payment risk assessment for its bureaus and developed a questionnaire to be used by all of the bureaus when assessing the risk of improper payments. The IRS used this questionnaire to review programs and to determine a numeric risk score to quantify the risk of improper payments in IRS programs for Fiscal Year 2012.

However, we reported in January 2013 that this process does not provide a reliable assessment of improper payment risk for IRS revenue program funds.[13] Programs selected by the Department of the Treasury for the IRS to evaluate for improper payment risk were defined based on fund groups rather than by significant broad-based activities. In addition, the questionnaire did not effectively address risks associated with tax refund payments, and risk assessments were not performed in compliance with Department of the Treasury guidelines. While IRS management agreed with our recommendations, the IRS cannot change the risk assessment process or the design of the questionnaire without the consent of the Department of the Treasury.

Characteristics of the EITC contribute to its improper payment rate

The IPERA requires agencies to achieve an improper payment rate of 10 percent or less for each of their high-risk programs. However, the IRS faces a significant challenge in achieving an improper payment rate of 10 percent for the EITC Program.

The IRS has reported an EITC improper payment rate above 20 percent since Fiscal Year 2003. While the estimated EITC improper payment rate has declined over the years, the estimated payments made in error have increased from at least $9.5 billion in Fiscal Year 2003 to at least $11.6 billion in Fiscal Year 2012. The IRS has implemented a number of programs to improve EITC compliance and reduce improper payments with varying levels of success. These include

[12] TIGTA, Ref. No. 2013-40-015, *Improper Payments Elimination and Recovery Act Risk Assessments of Revenue Programs Are Unreliable* (Jan. 2013).
[13] Revenue program funds generally represent specific individual credits or payments.

The Internal Revenue Service Was Not in Compliance With All Requirements of the Improper Payments Elimination and Recovery Act for Fiscal Year 2012

compliance efforts such as the EITC recertification program, which focuses on taxpayers who had the EITC denied in prior years during an audit, and prerefund audits, *i.e.*, those initiated before the refund is issued. The IRS has also provided extensive outreach related to the credit and has expanded oversight over paid tax preparers. However, despite these efforts, the annual EITC improper payment amount has consistently been one of the largest of all Federal programs.

Two primary factors affect the IRS's ability to make significant reductions in EITC improper payments:

1) The population of taxpayers who are eligible to claim the EITC changes each year.
2) Statutory tax return processing time periods affect the IRS's ability to verify the accuracy of EITC claims before they are paid.

Eligibility for the EITC is based on income and family size. As such, taxpayers' eligibility for the EITC changes from year to year as their financial status and family structure change. In addition, the eligibility requirements and the amount of the EITC available to taxpayers have also changed a number of times since the EITC was enacted in Calendar Year 1975. As a result, a portion of the taxpayers who claim the EITC each year are first-time claimants or taxpayers whose eligibility for the credit is intermittent from year to year. This ever-changing population of EITC claimants makes it difficult for the IRS to gain lasting improvements in EITC compliance through outreach, education, and enforcement.

Lastly, statutory requirements limit the IRS's ability to ensure that EITC claims are valid before they are paid. Since the EITC is administered through the Internal Revenue Code, it is claimed by taxpayers during the filing and processing of their tax returns. The Internal Revenue Code requires the IRS to process tax returns and pay any related tax refunds within 45 days of receipt of the tax return or the tax return due date, whichever is later.[14] Because of this requirement, the IRS cannot conduct extensive eligibility checks similar to those that occur with other Federal programs that typically certify eligibility prior to the issuance of payments or benefits.

Despite these significant challenges, the IRS must continue to work with the Department of the Treasury and other stakeholders to make real progress towards becoming compliant with the IPERA. Establishing incremental reduction targets that can be used to evaluate the benefit of the IRS's compliance and outreach efforts would be a good first step to reducing EITC improper payments.

[14] Internal Revenue Code Section 6611(e)(1).

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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to assess the IRS's compliance with the IPERA.[1] The IPERA requires TIGTA to review annually the IRS's compliance with the IPERA reporting requirements. The scope of this review was limited to an assessment of the information that the IRS provided for inclusion in the *Department of the Treasury Agency Financial Report Fiscal Year 2012*. To accomplish our objective, we:

I. Determined if the *Department of the Treasury Agency Financial Report Fiscal Year 2012* complied with the IPERA reporting requirements. We compared the information contained in the agency financial report to the IPERA reporting requirements outlined in the Office of Management and Budget Circular A-123, *Management's Responsibility for Internal Control*, guidance on improper payment reporting. We also compared the information provided by the IRS to the Department of the Treasury with the information contained in the agency financial report to ensure that the information was accurately reflected in the report.

II. Evaluated the accuracy and reasonableness of the IRS's estimate of the EITC improper payment rate. We compared information related to EITC overclaim cases provided by the IRS to information on the IRS Master File[2] to ensure that data used by the IRS to compute the EITC overclaim rate were valid. We also evaluated the IRS computations of the overall EITC improper payment rate and associated dollar projections to verify they were accurate.

Internal controls methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined the following internal controls were relevant to our audit objective: controls in place to ensure that the IRS met the reporting requirements established in the IPERA. We tested these controls by reviewing and analyzing relevant documents, data, and calculations related to preparation of IPERA improper payment estimate information.

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[1] Pub. L. No. 107-300, 116 Stat. 2350.

[2] The IRS database that stores various types of taxpayer account information. This database includes individual, business, and employee plans and exempt organizations data.

The Internal Revenue Service Was Not in Compliance With All Requirements of the Improper Payments Elimination and Recovery Act for Fiscal Year 2012

Appendix II

Major Contributors to This Report

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Appendix III

Report Distribution List

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Appendix IV

Internal Revenue Service Programs Identified for Improper Payment Risk Assessments

The following IRS programs were identified by the Department of the Treasury for improper payment risk assessments for Fiscal Year 2012.

IRS Program	Type of Program	Level of Risk Identified
Affordable Health Care Program	Administrative	Low
Business Systems Modernization	Administrative	Low
Health Insurance Tax Credit	Administrative	Low
Information Systems	Administrative	Low
Tax Law Enforcement	Administrative	Low
Taxpayer Services	Administrative	Low
Adoption Credit	Revenue	Low
Alternative Minimum Tax Credit Refunds	Revenue	Low
American Opportunity Credit	Revenue	Low
Build America Bonds	Revenue	Low
Child Tax Credit Payments	Revenue	Low
Consolidated Omnibus Budget Reconciliation Act (COBRA) Insurance	Revenue	Low
Corporation Refunds – Alternative Minimum Tax	Revenue	Low
Earned Income Tax Credit Disbursements[1]	Revenue	High
Grants for Investments in Qualified Therapeutic Projects in Lieu of Tax	Revenue	Low
Health Care Credit Payments	Revenue	Low
Home Buyers Credit Refunds	Revenue	Low
Informant Reimbursement	Revenue	Low

[1] The EITC Program has been declared a high-risk program for improper payments by the Office of Management and Budget; therefore, no formal risk assessment is required for it.

The Internal Revenue Service Was Not in Compliance With All Requirements of the Improper Payments Elimination and Recovery Act for Fiscal Year 2012

IRS Program	Type of Program	Level of Risk Identified
Making Work Pay Credit	Revenue	Low
New Clean Renewable Energy Bonds	Revenue	Low
Qualified Zone Academy Bonds	Revenue	Low
Qualified School Construction Bonds	Revenue	Low
Refund Collection	Revenue	Low
Refund Collection – Interest	Revenue	Low
Small Employer Health Care Tax Credit	Revenue	Low

Source: IRS Office of the Chief Financial Officer.

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Appendix V

Management's Response to the Draft Report

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMISSIONER

February 14, 2013

MEMORANDUM FOR MICHAEL E. MCKENNEY
ACTING DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Pamela J. LaRue
Chief Financial Officer

SUBJECT: Draft Audit Report –The Internal Revenue Service Was Not in Compliance With All Requirements of the Improper Payments Elimination and Recovery Act for Fiscal Year 2012 (Audit # 201240045)

Thank you for the opportunity to review and respond to the draft report titled, "The Internal Revenue Service Was Not in Compliance With All Requirements of the Improper Payments Elimination and Recovery Act for Fiscal Year 2012" (Audit # 201240045).

In your report, you state that "[b]ased on materiality, it is reasonable to omit [Earned Income Tax Credit] underpayments when computing the Fiscal Year 2012 improper payment rate. However, the IRS should continue to evaluate the significance of EITC underpayments annually and ensure that underpayments are included in its annual estimate of the EITC improper payment rate if warranted." The IRS will continue to evaluate the significance of underpayments and report on that in the Fiscal Year 2013 estimate.

If you have any questions, please contact me at (202) 622-6400, or a member of your staff may contact Peter Rose, Associate Chief Financial Officer, Corporate Planning and Internal Control, at (202) 435-6422.

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DEPARTMENT OF THE TREASURY
WASHINGTON

ASSISTANT SECRETARY

MAR 14 2013

MEMORANDUM FOR MARLA A. FREEMAN
ASSISTANT INSPECTOR GENERAL FOR AUDIT

FROM: Nani A. Coloretti NAC
Assistant Secretary for Management

Dorrice Roth Dorrice Roth
Deputy Chief Financial Officer

SUBJECT: Management Response to Draft Report – The Department of the Treasury Was Not in Compliance With the Improper Payments Elimination and Recovery Act (IPERA) for Fiscal Year (FY) 2012

We have reviewed the subject draft report and appreciate the opportunity to respond. Treasury recognizes the importance of achieving full compliance with IPERA, which includes complying with the government-wide implementing guidance issued by the Office of Management and Budget (OMB) in Memorandum M-11-16, *Issuance of Revised Parts I and II to Appendix C of OMB Circular A-123*, and OMB Circular A-136, *Financial Reporting Requirements*. Last year, Treasury worked diligently to implement the Office of the Inspector General (OIG) FY 2011 recommendations. Currently, Treasury is working with OMB, with respect to the Earned Income Tax Credit (EITC), to require annual improper payment estimate updates instead of reduction targets. Additionally, the IRS will work with OMB to develop supplemental measures for the EITC that are appropriate for gauging the impact of the compliance and outreach efforts in lieu of developing error reduction targets.

IRS currently has corrective actions in place to reduce the improper payment rate, but there are numerous barriers, including authentication errors, verification errors, the complexity of the tax law, and the structure of the EITC.

Treasury will also enhance its IPERA implementation guidance and oversight activities to ensure that bureaus and offices are submitting the necessary improper payments information that Treasury will then report in the PAR/AFR in accordance with OMB requirements.

Attached are our planned corrective actions in response to your recommendations. If you have any questions, please let us know, or your staff may contact Harold Barnshaw, Director, Risk and Control Group (RCG), at (202) 622-9331.

Attachment

Attachment

Recommendation 1: We recommend that the Deputy Chief Financial Officer ensure that Treasury submits a comprehensive plan to Congress that includes a description of the corrective actions it will take to remediate non-compliance with IPERA due to IRS's EITC improper payments reporting deficiencies.

Corrective Action 1-1: We agree with this recommendation. Treasury is working with OMB, with respect to the EITC, to require annual improper payment estimate updates instead of reduction targets. Additionally, the IRS will work with OMB to develop supplemental measures for the EITC that are appropriate for gauging the impact of the compliance and outreach efforts in lieu of developing error reduction targets.

IRS currently has corrective actions in place to reduce the improper payment rate, but there are numerous barriers, including authentication errors, verification errors, the complexity of the tax law, and the structure of the EITC.

These actions will help ensure that Treasury submits a comprehensive plan to Congress.

Implementation Date: September 30, 2013

Responsible Official: Assistant Secretary for Management

Recommendation 2:

1. Ensure that the current year total amounts of improper payments recovered and dispositions of recaptured funds are accurately reported in the PAR/AFR in accordance with OMB requirements.
2. Ensure that Treasury reports in its PAR/AFR, all programs and activities where it has determined conducting a payment recapture audit program would not be cost-effective and a description of the justification and analysis supporting the decision.

Corrective Action 2-1: We agree with this recommendation. Treasury will enhance its IPERA implementation guidance to require bureau and office submission of the necessary improper payments information that Treasury will then aggregate and report in the PAR/AFR in accordance with OMB requirements.

Implementation Date: May 31, 2013

Responsible Official: Assistant Secretary for Management

Corrective Action 2-2: We agree with this recommendation. Treasury will enhance its IPERA implementation guidance and oversight to ensure complete and accurate reporting in the PAR/AFR of programs and activities where it has determined that conducting a payment recapture audit program would not be cost-effective, to include a description of the justification and analysis supporting the decision.

Implementation Date: November 15, 2013

Responsible Officer: Assistant Secretary for Management

Joel A. Grover, Deputy Assistant Inspector General for Financial Management and Information Technology Audit
Michael Fitzgerald, Director, Financial Audit
Catherine Yi, Audit Manager
Myung Han, Audit Manager
Kenneth Harness, Auditor-in-Charge
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Robert Hong, Auditor
Colleen McElwee, Referencer

<u>The Department of the Treasury</u>

Secretary of the Treasury
Deputy Secretary of the Treasury
Assistant Secretary for Management
Deputy Chief Financial Officer
Director, Risk and Control Group

<u>Office of Management and Budget</u>

Controller, Office of Federal Financial Management
OIG Budget Examiner

<u>United States Senate</u>

Chairman and Ranking Member
Committee on Homeland Security and Governmental Affairs

<u>U.S. House of Representative</u>

Chairman and Ranking Member
Committee on Oversight and Government Reform

<u>U.S. Government Accountability Office</u>

Comptroller General of the United States