



**THE U.S. CONSUMER PRODUCT
SAFETY COMMISSION**

*Report on the Performance Review Over
IPERA Program for CPSC*

May 15, 2017

**KEARNEY &
COMPANY**

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U.S. CONSUMER PRODUCT SAFETY COMMISSION

Date: May 15, 2017

Via Electronic Transmission

TO : Ann Marie Buerkle, Acting Chairman
Robert S. Adler, Commissioner
Elliot F. Kaye, Commissioner
Joseph Mohorovic, Commissioner
Marietta S. Robinson, Commissioner

FROM : Christopher W. Dentel, Inspector General

SUBJECT: Improper Payments Elimination and Recovery Act (IPERA) Review

The Improper Payments Information Act of 2002 (IPIA), as amended by the Improper Payments Elimination and Recovery Act of 2010 (IPERA), further amended by the Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA), as implemented by Office of Management and Budget Memorandum M-15-02, requires that Federal agencies take several steps to reduce improper payments and that Inspectors General review annually their agency's improper payment reporting in their agency's Performance and Accountability Report (PAR) or Agency Financial Report (AFR) as appropriate.

For the reasons set forth below, I have determined that the Consumer Product Safety Commission (CPSC) is not in compliance with IPERA as implemented by M-15-02. Specifically, the CPSC was found to have performed a noncompliant program-specific risk assessment of its non-payroll activities, to have erroneously reported that its gross improper payment rate was under 10 percent for its non-payroll activities, and to have failed to report approximately \$29.4 million in improper payments for FY 2016. It should be noted that these payments were improper because the individuals authorizing the payments lacked the legal authority to do so, not necessarily because the payments were determined to be fraudulent or wasteful.

METHODOLOGY

To assess agency compliance with IPERA for FY 2016, the CPSC Office of Inspector General (OIG) retained the services of Kearney & Company (Kearney) an independent certified public accounting firm. Under a contract monitored by the OIG, Kearney issued an inspection report regarding the CPSC's compliance with IPERA. The contract required that the inspection be performed in accordance with the Council of the Inspectors General on Integrity and Efficiency's

(CIGIE) Quality Standards for Inspection and Evaluation (QSIE). The inspection was able to leverage the findings made from an ongoing audit of the CPSC's contract management process. This audit was the first review of the CPSC's contract management process during my tenure as the Inspector General. Previous reviews, such as the Financial Statement Audits, have touched upon the financial side of the contracting process, but not covered the contract management process.

Kearney found the CPSC was not compliant with IPERA, as amended by IPERIA, and OMB M-15-02. Although the CPSC did complete a program-specific risk assessment, as required, the portion of its risk assessment dealing with non-payroll activities failed to identify significant risks and as a result the CPSC failed to identify improper payments in its non-payroll program.¹

The CPSC did not concur with Kearney's finding that the agency was not in compliance with IPERA, as amended by IPERIA, and OMB M-15-02 requirements. CPSC management provided a response, which is reproduced in full as an appendix to Kearney's report. Kearney did not audit the management response; and accordingly, did not provide any assurance over it. Similarly, the CPSC OIG has not audited the management response, but after reading it, I offer the following observations.

RISK ASSESSMENT

The CPSC was required by OMB M-15-02 to “. . . institute a systematic method of reviewing all programs and identify programs susceptible to significant improper payments.”² The methodology employed by the CPSC did not identify its non-payroll payments program as being susceptible to improper payments. It did not take into account the failure of contracting officers to exercise their responsibility to properly monitor their contracts after award or the defects in the control environment related to the failure to establish a proper organizational structure for, assign responsibility over, or delegate authority regarding contract administration.

The CPSC's risk assessment process consisted of a questionnaire conducted every 3 years and an internal control evaluation conducted annually. The CPSC's internal control evaluation was conducted, but failed to identify significant risks involving improper payments for non-payroll activities, such as payments to commercial entities.

The internal control evaluation assessed the sufficiency of internal controls in place in five areas or “standards.” CPSC personnel inaccurately calculated the degree of risk associated with two of the five internal controls standards. The scores assigned to the standards, “monitoring of non-payroll activities” and “control environment” were not aligned with the actual level of internal

¹ For the purpose of its program-specific risk assessment, the CPSC categorized its activities into three separate programs: Program 1 (about \$60.1 million) – Payroll (i.e., salaries and benefits paid to employees); Program 2 (about \$31.0 million) – Non-Payroll (i.e., contracts, BPA calls, travel, employee reimbursements, purchase card, travel centrally billed account, fleet card, and other miscellaneous obligating documents); Program 3 (about \$0.2 million) – Grants.

² OMB M-15-02, Part 1, Section A, paragraph 9, subparagraph b

control found by Kearney. The scores assigned indicated that sufficient internal controls were in place to prevent improper payments when in fact significant weaknesses existed. As a result, the risk assessment process failed to identify existing risks and the CPSC was unnecessarily exposed to potential improper payments.

Monitoring

The CPSC staff performing the internal control evaluation scored “monitoring of non-payroll activities” at level 4, the highest possible score, indicating that the agency believes that there is no room for improvement in this area. However, Kearney’s evaluation determined that contracting officers were not monitoring the contracting officer representatives’ (COR) contract administration.³ Kearney determined through interviews that the contracting officers believed that they did not have a responsibility to perform this monitoring despite the fact that they are ultimately responsible for the performance of the contracts in accordance with the Federal Acquisition Regulation (FAR).⁴

Authority can be delegated, but responsibility cannot. Even if authority over contract management had been properly delegated to the CORs, which it was not, the COs would still have been required by law to maintain responsibility to ensure the proper administration of the contracts in question, i.e. the monitoring of the performance of the contracts.⁵ However, both the COs and CORs interviewed indicated that the COs did not monitor the CORs’ contract administration/performance. Agency management conceded this point when in their response they wrote that the contracting office “. . . monitors and works with the COR on **non-performance** (emphasis added) issues . . .” Agency management made no similar assertion regarding COs monitoring or working with CORs regarding contract “performance” issues.

Control Environment

The staff performing the internal control evaluation scored “control environment”⁶ as a “4,” level 4 is the highest possible score and indicates that the agency believes that there is no room for improvement in this area. In support of this evaluation, CPSC personnel stated that “[the] management team is dedicated and knowledgeable regarding these controls and promotes the use of controls for proper risk mitigation.”

³ Contracting efforts are generally divided into two phases: contract formation, which consists of the planning, drafting, and entering into a contractual relationship (offer and acceptance); and contract administration, which is the actual monitoring of the performance of the contract and if necessary any modifications to same.

⁴ FAR 1.602-2

⁵ FAR 1.602-2

⁶ OMB M-15-02, in relevant part, defines Control Environment as follows “. . . Clearly defining key areas of authority and responsibility and establishing appropriate lines of reporting within and external to the agency (e.g., program offices or state governments) . . . Ensuring that personnel involved in developing, maintaining, and implementing control activities have the requisite skills and knowledge, recognizing that staff expertise needs to be frequently updated in evolving areas such as information technology and fraud investigation.

However, Kearney determined that CPSC management had not properly established an organizational structure, assigned responsibility, or delegated authority. Despite both the long-time CPSC practice of having CORs approve invoices for disbursement/payment and CPSC Order 1521.1 purporting to authorize CORs to “approve contractor invoices,” CORs do not inherently have this authority. As discussed in greater detail below, they were neither properly delegated their duties as CORs in general, in accordance with CPSC Directive 0340.4, nor properly delegated the specific authority to approve invoices in accordance with FAR 1.602-2(d). Additionally, as discussed above, the COs who did have the authority and responsibility to monitor contract administration/performance neither acknowledged this responsibility nor carried it out.

IMPROPER PAYMENTS

For the reasons detailed below, all of the payments authorized by CORs at the CPSC were improper, as that term is defined for the purposes of IPERA.⁷ Kearney determined that the CPSC neither identified nor reported the resulting improper payments amounting to approximately \$29.4 million.

Delegation Policies

The CPSC failed to properly delegate authority to its CORs in compliance with CPSC Directive 0340.4 and FAR 1.602(d). That said, I concur with that portion of management’s response that states that CPSC Directive 0340.4 does not explicitly address COR responsibilities. However, CPSC Directive 0340.4 does address limitations on the CO’s ability to delegate authority to a COR.⁸

Ordinarily, a CO has the inherent authority to delegate to a COR the authority to “perform specific technical or administrative functions.” (See definition of a COR in FAR Part 2 and FAR 1.602-2, & 1.604). However, the “designation and authorization”⁹ of CORs by COs is governed

⁷ OMB M-15-02 defines an improper payment as, “An improper payment is any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements.”

⁸ To support their position that CPSC Directive 0340.4 does not apply to COs’ authority to delegate to CORs, the CPSC relies upon an argument premised around the distinction between the terms “delegating their warrant” (which the agency states is prohibited) and “the delegation of non-warrant functions” (which is apparently allowed.) Neither of these terms, nor the term “contract authority” which is also relied upon by management in their response, are defined in either the FAR or CPSC Directive 0340.4. Similarly, management cites no authority for its position that there is a relevant legal or regulatory distinction between a CO’s “warrant” or “non-warrant” authority. For that matter, management fails to articulate a basis for its position that COs (or CORs for that matter) have authorities of a “warrant” and/or “non-warrant” nature. No such distinction between types of CO’s or COR’s authorities can be found in the FAR or CPSC Directive 0340.4. It appears that management’s position is based on a fundamental misunderstanding of the nature and source of a CO’s and COR’s authority.

⁹ Please note, the FAR uses the terms “delegation of authority,” “authorized to perform,” “delegated responsibility,” “assigned some duties,” and “authority to act” at various times when referring to the delegation of the CO’s authority to the COR. Although the changing verbiage complicates the analysis, it is clear from the relevant clauses

by FAR 1.602-2(d) which states that the designation and authorization of CORs must be “. . . in writing and in accordance with agency procedures . . .” This means that the agency is bound by its own procedural requirements, not that the requirements of the FAR may be changed by agency’s procedures.¹⁰

Thus, the limitation on CO authority contained in CPSC Order 0340.4 at paragraphs 7c and 10b, which state that CO’s only have the authority to delegate their duties to CORs if they are explicitly granted delegation authority in writing on a Standard Form 1402,¹¹ binds the agency despite the fact that there is no similar requirement in the FAR.¹²

Delegation Practices

The agency’s failure to provide any of the COs in question with a Standard Form 1402 containing a written authorization to delegate their authority to CORs renders every delegation of authority from a CO to a COR at the CPSC invalid. A COR has only that authority which has been delegated by the CO.¹³ As a result, any action related to contract administration, including the approval of contractor invoices for payment, taken by the CORs was made without legal authority and was improper.

Although the failure of the CPSC to properly authorize any of its COs to delegate authority to any of its CORs renders the issue moot, I will briefly address the argument raised in the management response that a combination of local contracting clause 5 (LC5) and a collateral document, CPSC Directive 1521.1, could combine to constitute a valid delegation of the authority to pay contractor invoices from COs to CORs.

The standard language found in LC5 does explicitly and appropriately delegate several administrative functions from CPSC COs to CPSC CORs,¹⁴ the payment of invoices is not among these (it is not mentioned at all). LC5 contains no reference to any CPSC directive or other collateral source of COR authority.

Management acknowledges that LC5 does not contain an explicit delegation of the authority to pay invoices. It offers no explanation for why other delegations of authority were made explicitly but the delegation of the authority to approve and pay contractor invoices was not. Management asserts that the delegation of the authority to approve and pay invoices from the CO

that at all times we are referring to a specific and limited delegation of the CO’s inherent authority to the COR under FAR 1.602-1 & 2 (See FAR 1.602-2(d)(4), 1.602-2(d)(7)(i)&(II), 1.604, and FAR Part 2, definition of COR).

¹⁰ FAR 1.101 makes clear that agency regulations may “implement or supplement” the FAR but not supplant it.

¹¹ The FAR and CPSC Directive 0340.4 both require that CO appointments be made on a SF 1402 also referred to as a “warrant.”

¹² The exact quote in the directive is, “Only those individuals with written authority to delegate may delegate contracting officer authority,” the term “COR” does not appear in CPSC Directive 0340.4, however the FAR only grants the CO the authority to delegate to CORs and CAOs and the CPSC does not and has not ever utilized the CAO concept, so COR is clearly implied.

¹³ FAR Part 2, definition of a COR; FAR 1.602-2(d)(4)&(7)

¹⁴ At least it would but for the existence of CPSC Directive 0340.4 and the CPSC’s failure to comply with same.

to the COR is appropriate because “. . . the processing of invoices is considered an administrative function and LC5 states that the COR is responsible for performing specific technical and administrative functions . . .” and LC5 “is understood to include the enumerated list of COR responsibilities from CPSC’s COR directive, including the approval of invoices.”

The CPSC fails to provide a citation to any authority for this position, a definition of “administrative function;”¹⁵ nor any explanation of why, how, or by whom it is known that “LC5 is understood to include the enumerated list of COR responsibilities from CPSC’s COR Directive, including the approval of invoices.”

Management’s position is not compatible with FAR 1.602-2(d)(7). FAR 1.602-2(d)(7) requires that the designation of the COR be made in writing and that the written designation specify the extent of the COR’s authority to act on behalf of the contracting officer, identify the limitations of the COR’s authority to act on behalf of the contracting officer, and that a copy of same be provided to the contractor. The CPSC’s reliance on collateral documents, a practice referenced in neither the FAR nor LC5, and its expansion of the CORs duties to include those intended by “CPSC policy,” whether referenced in the contract or not, is clearly not in compliance with the above referenced FAR requirements.

OIG Monitoring Statement

In connection with the contract, we reviewed Kearney’s report and related documentation and inquired of its representatives. Our review was not intended to enable us to express, and we do not express, an opinion on the matters contained in the report. Kearney is responsible for the attached report. However, our review disclosed no instances where Kearney did not comply, in all material respects, with CIGIE’s QSIE.

If you have any questions please feel free to contact me at (301) 504-7644.



CHRISTOPHER W. DENTEL
Inspector General

Attached: Inspection Report

¹⁵ FAR 42.302 provides a detailed list of administrative functions which “may” at the CO’s discretion be delegated to a COR. This list contains over 70 authorities (which includes the payment of contractor invoices). The vast majority of these authorities are not appropriate for the CPSC’s use. No explanation is offered as to how or by whom a decision would be made regarding which of the duties would apply under management’s theory.

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OBJECTIVE

The objective of the performance review was to ensure that the United States Consumer Product Safety Commission (CPSC) is in compliance with the Improper Payments Elimination and Recovery Act of 2010¹ (IPERA) and taking sufficient steps to identify, prevent, and recapture improper payments. As requested by the CPSC Office of the Inspector General, (OIG) Kearney & Company, P.C. (defined as “Kearney,” “we,” and “our” in this report) reviewed CPSC’s fiscal year (FY) 2016 IPERA program.

BACKGROUND

In July 2010, the IPERA, which amended the Improper Payments Information Act of 2002² (IPIA), was enacted to further reduce improper payments. IPERA clarified the programs to be reviewed and expanded improper payments recapture activities. IPERA also required Inspectors General to determine whether an agency complies with IPERA and established additional requirements for agencies that were deemed non-compliant.

In April 2011, the Office of Management and Budget (OMB) issued guidance for agencies implementing IPERA requirements in Appendix C, Revised Parts I and II, of Circular A-123, *Management’s Responsibility for Internal Control*.³ The guidance defined the programs and payments that agencies must assess for the risk of improper payments and provided requirements for determining whether the risk of improper payments is significant, developing an estimate of improper payments, performing recapture review activities, and reporting improper payment activities.

In January 2013, the Improper Payment Elimination and Recovery Improvement Act of 2012⁴ (IPERIA) was enacted and further amended IPIA by requiring, among other things, that OMB identify high-priority Federal programs for greater levels of oversight and review, provide guidance to agencies for improving estimates of improper payments, and establish a working system for pre-payment and pre-award reviews.

PRIOR-YEAR RESULTS

In our FY 2015 Performance Review Report, Kearney concluded that CPSC was in compliance with IPERA, IPERIA, and the OMB Memorandum (M)-15-02, as promulgated by OMB. Kearney noted that CPSC:

- Published an Annual Financial Report (AFR) on the agency website and included required disclosures

¹ Public Law (PL) No. 111-204, 124, Statute (STAT.) 2224

² 31 United States Code (U.S.C.) 3321 note

³ OMB M-15-02, Appendix C to Circular No. A-123, *Requirements for Effective Estimation and Remediation of Improper Payments*

⁴ PL No. 112-248, 126, STAT. 2390

- Completed corrective actions associated with the prior-year (FY 2014) IPERIA inspection
- Completed prior-year non-compliance requirements as it prepared plans describing the actions the agency will take to become compliant and submitted to the required congressional committees, as well as the OIG and OMB
- Completed a risk assessment with methodology that was consistent with the guidance outlined
- Completed payment recapture review program cost effectiveness analysis and notified the OIG and OMB of the outcome and details supporting the conclusion.

Additionally, Kearney found that CPSC performed program-specific risk assessments for those activities identified as susceptible to significant improper payments and the risk assessment performed was consistent with CPSC's standard operating procedures and other support provided for this review. In addition, as opposed to the prior year (FY 2014), CPSC performed its FY 2015 risk assessment based on current-year data.

CRITERIA

IPERIA and OMB M-15-02 require Federal agencies to fulfill the following six criteria in order to achieve full compliance. Non-compliance with any one element results in overall non-compliance. The criteria are:

1. Publish and post an AFR or Performance Accountability Report (PAR) for the most recent FY and any accompanying materials required by OMB on the agency website
2. Conduct a program-specific risk assessment for each program or activity that conforms with Section 3321 note of Title 31 of the U.S.C.
3. Publish improper payment estimates for all programs and activities identified as susceptible to significant improper payments under its risk assessment
4. Publish programmatic corrective action plans (CAP) in the AFR or PAR, if required
5. Publish annual reduction targets for each program assessed to be at risk and estimated for improper payments, if required and applicable
6. Report 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 or PAR.

REVIEW RESULTS

Overall, Kearney found that for FY 2016, CPSC did not comply with IPERA. In accordance with OMB, non-compliance with any one element results in overall non-compliance. CPSC complied with the IPERA criteria except for two elements related to non-payroll payments, as shown in *Exhibit 1* below:

Exhibit 1: IPERA Compliance

Summary of IPERA Compliance by Criteria and Program			
Criteria	Payroll	Non-Payroll	Grants
Publish AFR	Yes	Yes	Yes
Complete Risk Assessment	Yes	No*	Yes
Estimate Improper Payments	Yes	Yes	Yes
Develop CAP	Yes	Yes	Yes
Meet Reduction Goals	Yes	Yes	Yes
Have < 10% Improper Payments	Yes	No*	Yes

* See Finding 2: Improper Payments on page 5.

Although CPSC completed a risk assessment, Kearney determined that the program-specific risk assessment was not sufficient for non-payroll activities. The risk assessment consisted of a questionnaire conducted every three years and an internal control evaluation conducted annually. CPSC did not identify significant risks in its internal control evaluation used to determine improper payment risk for non-payroll activities, such as payments to commercial entities. Consequently, CPSC was exposed to potential improper payments. CPSC did not identify approximately \$29.4 million in improper payments related to payments to commercial entities for FY 2016.

FINDINGS

Finding 1: Risk Assessment of Non-Payroll Payments Can Be Improved

We determined that the program-specific risk assessment was not sufficient for non-payroll activities.

CPSC leveraged the Fund Balance with Treasury reconciliation data and identified total disbursements by activity (i.e., salaries and benefits paid to employees, contracts, Blanket Purchase Agreement calls, travel, employee reimbursements, purchase card, travel centrally billed account, fleet card, and other miscellaneous obligations). CPSC then categorized these activities into three separate programs:

- Program 1 (about \$60.1 million) – Payroll (i.e., salaries and benefits paid to employees)
- Program 2 (about \$31.0 million) – Non-Payroll (i.e., contracts, Blanket Purchase Agreement calls, travel, employee reimbursements, purchase card, travel centrally billed account, fleet card, and other miscellaneous obligating documents)
- Program 3 (about \$.2 million) – Grants.

CPSC applied the significant improper payment test to each program. The test results showed that the agency did not have a program or payment activity that met the definition of a significant improper payment.

CPSC conducts a risk assessment every three years using a questionnaire and an annual internal control evaluation. For the most recent cycle, CPSC performed a qualitative risk assessment of each program's risk of incurring significant improper payments by scoring eight separate risk factors. The total risk score can be assessed as "Low," "Medium," or "High" in each program. The combined risk scores for all three CPSC programs were determined to be "Low."

Additionally, the same risk methodology was applied to the aggregate disbursement amount, which also was assessed as "Low." The risk factors applied were consistent with those outlined in OMB M-15-02, Part I.A.9, Step I.b, *Systematic Method*. As a result of a combined score of "Low," CPSC was not required to complete any further risk assessment.

Although CPSC personnel conducted an internal control evaluation, using a questionnaire that complied with OMB M-15-02, they did not identify significant risks as part of its internal control evaluation. Personnel inaccurately calculated the degree of risk associated with two of the five internal controls standards in contracting operations and payments to commercial entities. Agency scoring indicated that sufficient internal controls were in place to prevent improper payments when, in fact, significant weaknesses existed. This exposed the agency to potential improper payments.

Control Environment: This standard is the foundation for effective internal control and provides the discipline and structure which affect the overall quality of the control environment. For this standard, CPSC rated itself at a "4," the highest possible score, identifying itself as having sufficient internal controls related to the control environment for non-payroll activities.

One of the requirements for an effective control environment is the establishment of an organizational structure to assign responsibility and appropriately delegate authority to achieve the entity's objectives. However, CPSC management did not establish an effective organizational structure, assign responsibility, and delegate authority in a manner which met the requirements of both the FAR and CPSC's internal policies and procedures.

Monitoring: For this control, management should establish and operate activities to monitor the internal control system and evaluate the results. CPSC again rated its monitoring of non-payroll activities at a "4," the highest score possible, indicating that sufficient controls were in place to prevent improper payments.

However, Contracting Officers (CO) did not monitor Contracting Officer's Representatives' (COR) contract administration. We interviewed four COs and seven CORs. These individuals consistently told us that the COs do not monitor COR contract administration. CPSC policy does not require COs to do so. Therefore, COs believed that they did not have a responsibility to perform this monitoring, although they are ultimately responsible for the performance of the contract in accordance with the Federal Acquisition Regulation (FAR). The internal control evaluation score and lack of COR monitoring represented a disconnect in the evaluation process.

This occurred because CPSC did not have an effective process in place to identify internal control risks as part of its improper payment risk assessment.

We recommend the Executive Director:

1. Develop and implement an effective process for evaluating internal controls as part of the IPERA risk assessment.

Finding 2: Improper Payments

We determined that CPSC did not identify improper payments in the amount of approximately \$29.4 million.

Section 1.602.2(d) of the FAR requires agencies to “[d]esignate and authorize in writing and in accordance with agency procedures, a contracting officer’s representative (COR).” The CPSC has designated CORs, in writing, through Local Clause 5, which is in every contract. However, this delegation is invalid because the delegation is not made in accordance with agency procedures and thus does not meet the requirements of FAR Section 1.602.2(d).

While CPSC did provide delegation information in writing, the CPSC did not follow its own procedures regarding delegations as found in Directive 0340.4, *Delegation of Contracting Officer Authority*. The delegation requirements are “to be made in writing on a Standard Form 1402, “Certificate of Appointment,” also referred to as a “warrant.” The delegation and certification must be made to an individual, not a position, and must state any limitation (i.e., dollar thresholds) and specific responsibilities (i.e., authority to delegate). Only those individuals with written authority to delegate may delegate contracting officer authority.” We reviewed eight CO warrants and none included the authority to redelegate their authority to a COR.

CPSC practice calls for CORs to approve contractor invoices for payment. This practice is documented in CPSC Directive 1521.1, which states that CORs will “function as the CPSC official who approves contractor invoices.” Setting aside the requirements of agency procedures discussed above, the FAR allows COs to delegate their authority to CORs. Of particular relevance to the current situation, this delegation can include, but is not required to include, the authority to approve contractor invoices for payment. This would ordinarily be done through one of the FAR clauses found in Section 42.302.

According to management, COs relied on Local Clause 5 to “delegate” their authority to CORs. The language in this contract clause delegates certain responsibilities, such as inspection and acceptance of items, but does not delegate the approval of invoices for payments. In addition, Local Clause 5 does not reference CPSC Directive 1521.1 or any other potential source of additional COR authority. FAR Section 1.602-2(d)(7) requires that the writing designating the COR also specify the extent of the COR’s authority to act on behalf of the CO. The approval of contractor invoices by CPSC’s CORs represents an authority not delegated to them, thus

payments approved by CORs are improper payments under IPERA. This condition represents a systemic issue related to improper approval of vendor invoices.

Based on the CPSC-reported data, Kearney estimates improper vendor payments in the amount of \$29.4 million for FY 2016. Further, as we stated above, the issue is systemic to all vendor payments and the effect extends beyond the scope of our review.

This occurred because CPSC's practices do not align with agency policies and procedures, and agency policies and procedures do not align with FAR requirements.

We recommend the Executive Director:

2. Develop and implement CPSC practices, policies, and procedures which comply with the FAR.
3. Estimate the total amount of improper payments based on the systemic nature of the issue and the longstanding lack of formal delegation of authority. Report the payments as improper and implement the appropriate remediation and CAP depending on the total amount.

CONCLUSION

Kearney concludes that CPSC's FY 2016 IPERA review is not in compliance with IPERA and OMB M-15-02 criteria. Although CPSC completed the IPERA requirements, its risk assessment for non-payroll activities was not sufficient to identify significant risks and identify improper payments. Kearney discussed review results with the CPSC's management at an exit conference on May 10, 2017. (See **APPENDIX B – MANAGEMENT'S VIEWS ON CONCLUSIONS AND FINDINGS**).

APPENDIX A – SCOPE AND METHODOLOGY OF THE REVIEW

Scope

This report contains the results of our review of CPSC’s compliance with the requirements of IPERA and OMB M-15-02 for FY 2016. The scope of this review included transactions identified by CPSC as meeting the OMB M-15-02 definition of a payment made during FY 2016. In its internal review, CPSC identified approximately \$91.3 million in payments that met the definition of a payment as found in OMB M-15-02. Kearney conducted our review from March through May 2017 at CPSC’s Headquarters in Bethesda, MD.

Methodology

Kearney conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency’s Quality Standards for Inspection and Evaluation and the U.S. Government Accountability Office’s Generally Accepted Government Auditing Standards, which require that we obtain sufficient data to provide a reasonable basis for reaching conclusions. These standards also require that Kearney ensure that the evidence supporting findings, conclusions, and recommendations is sufficient, competent, and relevant, such that a reasonable person would be able to sustain the findings, conclusions, and recommendations. Sufficiency of data needed and tests of evidence varied based on the review objectives, findings, and conclusions. Kearney designed the review to obtain insight into CPSC’s current processes and procedures, as well as to assess compliance with IPERA requirements. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our review objectives.

Specifically, this review and resulting report should provide sufficient findings and recommendations to allow it to serve as:

1. A rigorous evaluation of CPSC’s compliance with IPERA and OMB-M-15-02
2. A consistent and understandable mechanism for reporting the results in the format established by Council of the Inspectors General on Integrity and Efficiency’s Quality Standards for Inspection and Evaluation and the U.S. Government Accountability Office Generally Accepted Government Auditing Standards
3. A roadmap that CPSC can follow to improve its processes.

APPENDIX B – MANAGEMENT’S VIEWS ON CONCLUSIONS AND FINDINGS

The CPSC did not concur with either finding. The CPSC has provided a response below to the findings presented in our report. We did not audit CPSC’s response; accordingly, we do not provide assurance on it.



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
BETHESDA, MD 20814

Memorandum

Date: May 12, 2017

TO: Christopher Dentel, Inspector General

THROUGH: Patricia H. Adkins, Executive Director *SDA for*
Jay Hoffman, Chief Financial Officer

FROM: Katie McGuiness
Acting Director of Financial Services

SUBJECT: CPSC FY 2016 IPERA Audit Management Response

Enclosed is Management's response related to the Notice of Finding and Recommendations (NFR) in the Kearney & Company draft report on the Performance Review Over IPERA ("Audit Report") provided in your email of May 9, 2017. Please include a copy of this response in Appendix B of the Audit Report. The Office of Financial Management Services (FMFS) acknowledges the NFRs in the Audit Report. The Audit Report concludes that for FY16 CPSC did not comply with IPERA. Management does not concur with this conclusion. Responses for each NFR are noted below:

Finding 1- Risk Assessment of Non-Payroll Payments Can Be Improved

The NFR states that CPSC did not perform a sufficient program-specific risk assessment for non-payroll activities. It states that CPSC inaccurately calculated the degree of risk associated with two of the five internal control standards in contracting operations and payments to commercial entities. Specifically:

- Monitoring- Contracting officers (CO) did not monitor Contracting Officer Representative's (COR) contract administration; and
- Control Environment- CPSC did not establish an effective organizational structure, assign responsibility, and delegate authority in a manner which met the requirements of both the FAR and CPSC's internal policies and procedures.

Management does not concur with the conditions of this finding. A detailed explanation is as follows:

Monitoring

COs monitor contract administration of CORs through various methods discussed below:

Training and Certification

FMPS implements and oversees the Office of Management and Budget (OMB) COR training and certification requirements for all CORs, which is conducted through the Federal Acquisition Institute Training Application System (FAITAS). All CORs are required to receive no less than eight hours of training, and in most instances 40 hours of training, to obtain the OMB required level of certification. In addition, CORs must receive up to 40 hours of additional training every 2 years to maintain the COR certification. The FAITAS certification is a government-wide standard for CORs. FMPS monitors all COR certifications and works with CORs and supervisors to keep those certifications current. The certification training reinforces the roles and responsibilities of the COR to include reiterating COR fundamentals. All of the CPSC CORs are current on their OMB FAITAS certification level. Information on the government-wide certification process can be found at <https://www.fai.gov/drupal/certification/certification-and-career-development-programs>.

Procurement Process

FMPS monitors CORs in the early stages of the procurement process. This starts with acquisition planning that includes assistance with writing the performance work statement, selecting the best procurement method, writing evaluation factors and selection of sources. Once contract award is made, the CO continues to work with the COR to assure all terms and conditions are met in accordance with the contract. FMPS monitors and works with the COR on non-performance issues and any adverse situation that would prohibit the receipt of satisfactory products/services. FMPS also monitors administrative concerns, i.e. novation agreements, change of name requests, exercising options, extensions and delivery changes. Throughout the contract process and prior to expiration of the contract, FMPS provides the required support for all requested contract changes. Changes, revisions, obligations and de-obligations to a contract can only be accomplished by the CO. Therefore, FMPS and the COR have continuous contact to assure satisfactory completion of all contracts.

Control Environment

Through agency policy and the Office of Procurement Services (FMPS), assignment of responsibilities and delegation of authority were both properly given to the CORs. In accordance with FAR 1.602-2(d) (7), the Contracting Officer's responsibilities, the CO has the authority to designate a COR when done in writing and in accordance with agency procedures, with copies furnished to the contractor and the contract administration office--

- (i) Specifying the extent of the COR's authority to act on behalf of the Contracting Officer
- (ii) Identifying the limitations on the CORs authority;
- (iii) Specifying the period covered by the designation;
- (iv) Stating the authority is not redelegable; and
- (v) Stating the COR may be personally liable for unauthorized acts.

The CO assigns responsibilities and authority through Local Clause (LC) 5, COR Designation, a written notification included in the award document. This clause constitutes the letter of designation,

required by FAR 1-604. (LC) 5 specifically states: "the following individual has been designated as the Government's COR for this contract." The clause also states "the CPSC COR is responsible for performing specific technical and administrative functions." The designation is incorporated into the binding contract, signed by the CO, and distributed to the contractor and the COR as specified in FAR 1.602-2(d) (7). (LC) 5 also addresses each of the items covered in FAR 1.602(d)(7)(i)-(v) by assigning responsibilities, identifying prohibited activities, and discussing potential personal liability and non-delegability. Furthermore, CPSC's Directive 1521.1, *Contracting Officer's Representative (COR) Federal Acquisition Certification and Responsibilities* (COR Directive), spells out the certification requirements and responsibilities of the COR. CPSC's COR designation process fulfills the requirements for the COR's designation and authorization pursuant to FAR 1.602-2(d) and agency procedures.

Finding 2- Improper Payments

The NFR states CPSC did not identify improper payments in the amount of approximately \$29.4 million related to vendor payments.

The NFR noted two conditions within the finding:

1. CPSC did not properly delegate Contracting Officer Representatives (CORs) in accordance with Federal Acquisition Regulation (FAR) Section 1.602.2(d) and agency policy related to delegations found in Directive 0340.4, *Delegation of Contracting Officer Authority*, and
2. CPSC did not delegate in writing language to the effect that the COR has authority for "approval of invoices for payments."

Management does not concur with the conditions of this finding. A detailed explanation follows:

Condition #1- Delegation of COR Authority:

In accordance with the FAR section 1.603-3 *Appointment*, CPSC Directive 0340.4 establishes agency policy on the Delegation of Contracting Officers (CO). Section 7(d) of the Directive states that CO appointments are "to be made in writing" on a Standard Form 1402, "Certificate of Appointment," also referred to as a "warrant." The delegation and certification must be made to an individual, not a position, and must state any limitations (i.e., dollar thresholds) and specific responsibilities (i.e., authority to delegate). The Agency Head is the only individual in the Commission with the authority to delegate contracting authority. The Agency Head has delegated this authority to the Executive Director, also identified as the "Senior Procurement Executive". The Senior Procurement Executive selects and appoints all COs. Thus, pursuant to this Directive, the CO may not re-delegate contract authority, which is defined as the "authority and responsibility to contract for authorized supplies and services. . ." Directive 0340.4(5). Directive 0340.4 is not intended to, and does not, address COR responsibilities.

The NFR states that the COs' warrants that were examined did not contain any authority to re-delegate. Management agrees that agency policy, set forth in Directive 0340.4, prohibits COs from delegating their warrant, or, in other words, delegating their contract authority. This prohibition does not, however, extend to the delegation of non-warrant functions. The prohibition on delegation therefore must be read

in conjunction with the FAR and agency policy on COR responsibilities. Specifically, FAR 1.602-2(d) provides COs the authority to designate and authorize CORs to perform certain functions on behalf of the CO. In addition, CPSC's COR Directive establishes agency policy with regard to the designation of CORs and sets forth permissible COR actions, including the approval of contractor invoices. As noted above, CPSC currently accomplishes this designation through Local Clause 5 in every contract.

Condition #2- COR Approval of Invoice Payments

In accordance with FAR section 1.602-2(d), a CO can designate and authorize, in writing and in accordance with agency procedures, a COR. The COR designation states that the COR is responsible for performing specific technical and administrative functions. The processing of invoices is considered an administrative function and therefore is the responsibility of the COR, even though it is not specifically mentioned in the designation clause. In accordance with FAR 1.604, "a contracting officer representative assists in the technical monitoring or administration of a contract." CPSC's COR Directive contains a detailed summary of the COR duties and responsibilities at CPSC. This Directive specifically states the COR will "function as the CPSC official who approves contractor invoices." It also explains in detail the specifics of this function. CPSC policy and LC5 thus together provide sufficient designation of authority for CORs to engage in the administrative function of approving invoices as LC5 is understood to include the enumerated list of COR responsibilities from CPSC's COR Directive, including the approval of invoices. Management believes that the payments were not improper because the CORs were properly assigned the authority to approve contractor invoices for payment.

CPSC Assessment of Internal Controls and Other Audits

CPSC can attest to the accuracy and completeness of vendor payments based on continuous management review and monitoring of internal controls over financial reporting, including the disbursement process area. CPSC Management assesses and reports annually in accordance with *OMB Circular No. A-123, Management's Responsibility for Enterprise Risk Management and Internal Control*.

- In FY 2016, CPSC contracted the independent public accounting firm Cotton and Company, to assess internal controls over financial reporting in accordance with *A-123, Appendix A, Internal Control over Financial Reporting*, which included testwork over disbursement and vendor payments.
- Results of the assessment found no instances of non-compliance or improper payments performed during testwork.

In FY 2016, the independent public accounting firm Clifton Larson Allen (CLA), contracted by the Office of Inspector General (OIG), performed a financial statement audit over CPSC.

- The audit included sampling testwork over disbursements, including vendor payments, and found no instances of non-compliance or improper payment performed during testwork.
- CPSC received an Unqualified audit opinion over the FY 2016 Financial Statements.

As noted above, the vendor payments selected for testwork in the above audits were not found to be improper in nature and/ or appearance. The audit conclusions support Management's assertion that controls were effective and efficient to support the accuracy of payments.

Closing

Management does not concur with the findings. In accordance with Green Book, Principle 3.01, Management has established an organizational structure, assigned responsibility and delegated authority to achieve the entity's objectives. FMPS COs monitor the contract administration of CORs via various actions throughout the procurement process. CORs are provided with training designed and delivered at a government-wide level and COR training is monitored to assure compliance and that certifications are maintained. In accordance with FAR 1.603-3 and Directive 0340.4, CPSC has delegated the CO authority from the agency head as documented on the form 1402. In accordance with FAR 1.602-2(d) and agency policy as stated in Directive 1521.1, the COs have designated and authorized, in writing (using Local Clause 5) and in accordance with agency procedures, a COR on all contracts and orders other than those that are firm fixed price and for firm fixed price contracts and orders as appropriate. CPSC explicitly grants CORs the authority for administrative tasks, which includes the approval of invoices, and explicitly specifies that authority in the COR Directive. Therefore, CPSC's CORs have been properly designated to approve invoices and thus the payments made by CPSC were not improper.

Management continuously works to improve program internal controls and process areas. Management will revise Directive 0340.4 to clarify agency policy regarding CO delegations allowed under FAR 1.603-3. Management will further incorporate a formal designation letter for CORs to improve the clarity and understanding among CORs, as well as provide additional training over their authority. Agency Management will consider the OIG's recommendations as it develops and implements actions to further improve upon the program.

APPENDIX C – ACRONYMS

Acronym	Definition
AFR	Agency Financial Report
CAP	Corrective Action Plan
CO	Contracting Officer
COR	Contracting Officer’s Representative
CPSC	U.S. Consumer Product Safety Commission
FAR	Federal Acquisition Regulation
FY	Fiscal Year
IPERA	Improper Payments Elimination and Recovery Act of 2010
IPERIA	Improper Payments Elimination and Recovery Improvement Act of 2012
IPIA	Improper Payments Information Act of 2002
Kearney	Kearney & Company, P.C.
M	Memorandum
OIG	Office of Inspector General
OMB	Office of Management and Budget
PAR	Performance Accountability Report
PL	Public Law
STAT	Statute
U.S.C.	United States Code