Office of Inspector General

U.S. Consumer Product Safety Commission

Review of the CPSC's Compliance with IPERA for FY 2017

May 11, 2018

Vision Statement

We are agents of positive change striving for continuous improvements in our agency's management and program operations.

Statement of Principles

We will:

Work with the Commission and the Congress to improve program management;

Maximize the positive impact and ensure the independence and objectivity of our audits, investigations, and other reviews;

Use our investigations and other reviews to increase Government integrity and recommend improved systems to prevent fraud, waste, and abuse;

Be innovative, question existing procedures, and suggest improvements;

Build relationships with program managers based on a shared commitment to improving program operations and effectiveness;

Strive to continually improve the quality and usefulness of our products; and

Work together to address Government-wide issues.

Office of Inspector General
U. S. CONSUMER PRODUCT SAFETY COMMISSION

May 11, 2018

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

FROM: Christopher W. Dentel, Inspector General

SUBJECT: Improper Payments Elimination and Recovery Act 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.

I have determined that the Consumer Product Safety Commission (CPSC) was non-compliant with IPERA in FY 2017. This determination was based on the following three factors. First, the CPSC risk assessment process did not always attribute risk in a reasonable manner. Consequently, the CPSC was exposed to potential improper payments. Second, the CPSC did not obtain a statistically valid improper payment estimate for non-payroll activities consistent with the requirements of OMB M-15-02. Finally, the CPSC exceeded OMB's improper payment threshold by reporting an improper payment rate of 67% of non-payroll disbursements (about $21.1 of $31.3 million); OMB M-15-02 requires agencies to report a "gross improper payment rate of less than 10 percent . . ." It should be noted that the vast majority of these payments were improper because the individuals authorizing the payments lacked the legal authority to do so, not necessarily because the payments were fraudulent or wasteful.

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	No	Yes
Develop Corrective Action Plan	Yes	Yes	Yes
Meet Reduction Goals	Yes	Yes	Yes
Have < 10% Improper Payments	Yes	No	Yes

The CPSC was also not in compliance with IPERA in FY 2016. Therefore, the CPSC will need to comply with the reporting requirements of section II.B.1.b of Appendix C of OMB Circular A-123.

To assess agency compliance with IPERA for FY 2017, the CPSC Office of Inspector General (OIG) retained the services of Kearney & Company (Kearney), an independent public accounting firm. Under a contract monitored by the OIG, Kearney issued a review report regarding the CPSC's compliance with IPERA. The contract required that the review be performed in accordance with the Council of the Inspectors General on Integrity and Efficiency's Quality Standards for Inspection and Evaluation (CIGIE QSIE).

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.

Attached: Review Report

THE U.S. CONSUMER PRODUCT SAFETY COMMISSION

Review of the CPSC's Compliance with IPERA for FY 2017

Report Date: April 18, 2018

KEARNEY & COMPANY

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OBJECTIVE

The objective of the review was to determine whether the U.S. Consumer Product Safety Commission (CPSC) was in compliance with the Improper Payments Elimination and Recovery Act (IPERA) for the fiscal year (FY) ended 2017. As requested by the CPSC Office of the Inspector General, (OIG) Kearney & Company, P.C. (defined as "Kearney," "we," and "our" in this report) evaluated CPSC's FY 2017 IPERA Program.

BACKGROUND

In July 2010, IPERA, which amended the Improper Payments Information Act of 2002[1] (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 OMB Circular A-123, *Management's Responsibility for Internal Control.*[2] The guidance defines the programs and payments that agencies must assess for the risk of improper payments and provides 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, Improper Payment Elimination and Recovery Improvement Act[3] (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 review.

PRIOR YEAR RESULTS

In FY 2016, Kearney was engaged by the CPSC OIG to issue a review report regarding the CPSC's compliance with IPERA. Kearney found that the CPSC was not compliant with IPERA.

[1] 31 United States Code 3321 note
[2] OMB M-15-02, Appendix C to Circular No. A-123, *Requirements for Effective Estimation and Remediation of Improper Payments* (OMB M-15-02)
[3] Public Law No. 112-248, 126 Statute. 2390

In accordance with OMB guidance, non-compliance with any one element results in overall non-compliance. The CPSC complied with IPERA criteria except for two elements related to non-payroll payments.

Although the 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. The CPSC did not identify significant risks in the internal control evaluation it performed to determine improper payment risk for non-payroll activities. Consequently, the CPSC was exposed to potential improper payments. The CPSC did not identify approximately $29.4 million in improper payments related to payments to commercial entities for FY 2016.

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 in any program results in overall non-compliance. The criteria are:

1. Publish and post an Agency Financial Report (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 31 U.S.C 3321 note.
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 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 2017, the CPSC did not comply with IPERA. In accordance with OMB guidance, non-compliance with any one element results in overall non-compliance. The CPSC did not comply with three elements of IPERA related to non-payroll payments as shown in Table 1 below:

Table 1.

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	No	Yes
Develop Corrective Action Plan	Yes	Yes	Yes
Meet Reduction Goals	Yes	Yes	Yes
Have < 10% Improper Payments	Yes	No	Yes

The CPSC did improve its risk assessment process. The risk assessment process now includes developing a contract risk matrix and an internal control checklist for IPERA. However, as described below, Kearney determined that the risk attribution assigned by CPSC management was not always reasonable. Consequently, the CPSC was exposed to the potential of improper payments. The CPSC reported $21.1 million in improper payments related to payments to commercial entities for FY 2017. Further, the CPSC did not obtain a statistically valid estimate consistent with OMB M-15-02.

FINDINGS

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

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

- Program 1 (about $79.0 million) – Payroll (i.e., salaries and benefits paid to employees)
- Program 2 (about $31.3 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 $.5 million) – Grants.

The CPSC then 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 its definition of a significant improper payment.

The CPSC conducts a risk assessment every three years using a questionnaire and an annual internal control evaluation. The most recent assessment of risk indicates that management deems the risk of significant improper payments as "low." Therefore, the CPSC was not required to complete any further activities.

Although the questionnaire complied with OMB M-15-02, the internal control evaluation did not identify known significant risks within the CPSC's contracting operations or reasonably present the risk associated with the Commission's non-payroll activities.

For example, the contract risk matrix compares major contract types and identifies principal risks to be mitigated by each type. The matrix notes that the CPSC uses only firm fixed price contracts and that there are "no risks" to be mitigated. Although firm fixed price contracts are a lower risk to the government than some other contract types, they are not without risk (i.e., there is still a risk that the contract will not be executed in accordance with the contract terms and specifications.)

Additionally, personnel inaccurately calculated the degree of risk associated with non-payroll activities. The scoring indicated that sufficient internal controls were in place to prevent improper payments. However, the OIG had previously reported both the existence of improper payments and significant weaknesses in the relevant internal controls over non-payroll activities.

OMB M-15-02 requires agencies to review all programs and activities and identify those that are susceptible to significant improper payments. As part of this review "all agencies shall institute a systematic method of reviewing all programs and identify programs susceptible to significant improper payments." The results of this assessment determine whether or not the agency is required to obtain a "statistically valid estimate of the annual amount of improper payments in programs and activities for those programs that are identified as … susceptible to significant improper payments."

This condition occurred because the CPSC did not develop and implement an IPERA risk assessment that adequately considered the known risk related to its non-payroll activities. Although the CPSC personnel conducted an internal control evaluation, the evaluation did not identify significant risks which exposed the agency to potential improper payments.

The CPSC did not appropriately consider program-specific risk and may not have implemented all of the internal controls required to prevent improper payments.

Kearney recommends that CPSC management:

1. Develop and implement an effective IPERA risk assessment that provides adequate consideration to non-payroll activities.

Finding 2: Exceeded Federal Improper Payment Thresholds for Non-Payroll Activities

The CPSC was not in compliance with IPERA for FY 2017 because the CPSC had incurred significant improper payments in 2017 prior to performing the remedial actions described below.

Kearney determined that the CPSC exceeded the statutory improper payment threshold for non-payroll activities for FY 2017. The Commission reported as improper about $21.1 of $31.3 million (67 percent) of non-payroll disbursements. All but $10,000 of the improper payments were attributable to the CPSC's improper delegation of the authority to approve vendor invoices to CPSC employees designated as Contracting Officer Representatives (CORs). This was identified in the OIG 2016 IPERA review.

OMB M-15-02 requires agencies to 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."

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

During FY 2017, the CPSC took the following corrective actions:

- Incorporated a formal designation letter of authority to agency CORs;
- Removed the use of Local Clause 5 from contracts through a contract modification and issued the formal COR designation letter to vendors;
- Reissued Contracting Officer (CO) warrants to provided clarification on the delegation of duties;
- Revised CPSC Directive 0340.4 to clarify agency policy regarding CO delegations; and
- Revised CPSC Directive 1521.1 to clarify the authority and duties of CORs.

The CPSC completed the implementation of these actions in August 2017.

Kearney does not make any recommendations related to this finding as the CPSC completed its corrective actions in FY 2017 to remediate the cause of the finding.

Finding 3: Lack of a Statistically Valid Improper Payment Estimate for Non-Payroll Activities

Kearney determined that although the CPSC exceeded a 10 percent improper payment threshold for non-payroll activities in FY 2017, the Commission did not obtain a statistically valid estimate consistent with OMB M-15-02 requirements.

Instead, the CPSC performed a statistical sample that appears to include all program activities – payroll, non-payroll, and grant activities – which means that non-payroll activities may not have been appropriately represented in the sample. Further, the plan only included payments through June 2017, and neither the plan, nor the other documentation, provided any details on the improper payment testing criteria used.

OMB M-15-02 requires agencies to "obtain a statistically valid estimate of the annual amount of improper payments in programs and activities for those programs that are identified … as susceptible to significant improper payments."

As part of this estimate, agencies must conform to a process specified in OMB guidance which includes an annual estimate, statistical sampling and estimation plans, and certification. OMB also encourages working with other entities (e.g., grant recipients) and incorporating recommendations from agency staff and auditors.

Additionally, OMB specifies the contents of the statistical sampling and estimation plan and requires the following components to be "clearly" addressed:

- Probability sampling
- Assumptions about the amount of improper payments
- Appropriate sample sizes
- Precision
- Sample design documentation
- Documentation of estimation formulas

Agencies must meet the requirements to complete a statistical sample unless the agency submits an explanation and justification to OMB for an alternative method and OMB approves that method.

This condition occurred because the CPSC did not implement effective policies and procedures for performing and reporting improper payments in accordance with OMB M-15-02. Specifically, the CPSC did not realize that the recertification of improper payments did not make them proper and that the CPSC was still required to report the improper payments in accordance with OMB M-15-02.

Based on our review of the Commission's IPERA supporting documentation, management performed a risk assessment and assessed risk across all program activities as "low," indicating that none of the CPSC's program activities required a statistical estimate. Management concluded that the "CPSC does not have payment activities that is *(sic)* at risk of incurring a $10M improper payment without being detected by internal controls," and an improper payment estimate was "NA" (not applicable).

Because CPSC personnel did not obtain a statistical estimate consistent with OMB M-15-02, they may not have identified other improper payments or issues impacting the propriety of the payment. This exposed the CPSC to ongoing significant improper payments in future fiscal years.

Kearney recommends that CPSC management:

2. Implement policies and procedures for performing and reporting improper payments that are consistent with OMB M-15-02 (e.g., performing qualitative and quantitative risk assessments and obtaining a statistically valid estimate of improper payments for activities susceptible to significant improper payments).

CONCLUSION

Based on the review results previously noted, Kearney concludes that CPSC's FY 2017 IPERA review is not in compliance with IPERA and OMB M-15-02. Although the CPSC completed IPERA requirements, its risk assessment for non-payroll activities was not sufficient to identify significant risks and identify potential improper payments. Kearney discussed our review results with the CPSC's management (see ***APPENDIX C – 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 the CPSC's compliance with the requirements of IPERA and OMB M-15-02 for FY 2017. The scope of this review included transactions identified by the CPSC as meeting the OMB M-15-02 definition of a payment made during FY 2017. The CPSC, in its internal review, identified approximately $110.8 million in payments that met the definition of a payment as found in OMB M-15-02. Kearney conducted its review from February through April 2018 at CPSC's Headquarters in Bethesda, Maryland.

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, 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 the 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.

APPENDIX B – INDEX OF REVIEW RECOMMENDATIONS

Finding	Recommendation
Finding 1	1. Develop and implement an effective IPERA risk assessment that provides adequate consideration to non-payroll activities.
Finding 3	2. Implement policies and procedures for performing and reporting improper payments that are consistent with OMB M-15-02 (e.g., performing qualitative and quantitative risk assessments and obtaining a statistically valid estimate of improper payments for activities susceptible to significant improper payments).

APPENDIX C – MANAGEMENT'S VIEWS ON CONCLUSIONS AND FINDINGS

The CPSC concurred with the findings presented in this report.

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

Management generally agrees with the finding and recommendations.

Management has a risk assessment methodology developed in accordance with OMB M-15-02 to individually score improper payments with respect to payroll, non-payroll, and grant payments which are then reported as an overall weighted risk score. In conducting the improper payment risk assessment for FY 2017, Management did consider the FY 2016 IPERIA non-compliance and the FY 2016 Contract Management audit findings, increasing the improper payment risk rating for non-payroll payments from a score of 10 (low risk) to a score of 13 (medium risk). The specific criteria that incorporated the non-payroll improper payment risks changes are:

Are there significant deficiencies in the audit reports of the agency that might hinder accurate payment certification?

- FY 2015 risk score: 1 (low)
- FY 2016 risk score: 2 (medium)

Are there any indicators from prior year's improper payment work that would indicate a potential risk?

- FY 2015 risk score: 1 (low)
- FY 2016 risk score: 3 (high)

Management will make improvements consistent with the auditor's recommendation to define the risk rating methodology and to individually assess risk for the three payment activities rather than report an overall weighted risk score.

Finding 2: Exceeded Federal Improper Payment Thresholds for Non-Payroll Activities

Management agrees with the finding and the auditor's statement that the underlying cause of the improper payments has been addressed by the corrective actions implemented in the third quarter of FY 2017.

Payments subsequent to the corrective action implementation should be proper with respect to contracting officer representatives having the proper designation and authority to approve invoices as delegated from the contracting officers.

Finding 3: Lack of a Statistically Valid Improper Payment Estimate for Non-Payroll Activities

Management generally agrees with the finding and recommendation.

Management has a statistical sampling process for IPERIA documented in Standard Operating Procedures (SOP) DB.06.v3, Improper Payments Elimination and Recovery Act Policies and Procedures under Process 2, step 2, Quantitative Risk Assessment Procedures. Management will revise the SOP to clarify that explicit approval of the statistical plan from OMB is required.

APPENDIX D – ACRONYMS

Acronym	Definition
AFR	Agency Financial Report
BPA	Blanket Purchase Agreement
CO	Contracting Officer
COR	Contracting Officer's Representative
CPSC	U.S. Consumer Product Safety Commission
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.
OIG	Office of Inspector General
OMB	Office of Management and Budget
OMB M-15-02	OMB M-15-02, Appendix C to Circular No. A-123, *Requirements for Effective Estimation and Remediation of Improper Payments*
PAR	Performance Accountability Report

CONTACT US

If you want to confidentially report or discuss any instance of misconduct, fraud, waste, abuse, or mismanagement involving CPSC's programs and operations, please contact the CPSC Office of Inspector General.

Call: Inspector General's HOTLINE: 301-504-7906
Or: 1-866-
230-6229

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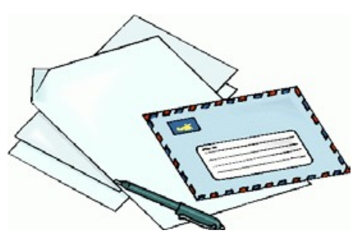
Click here for complaint form.

Click here for CPSC OIG Website.



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