

Government Contracts Blog

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Improper Payments Elimination Act Provides Opportunities For Contractors

By [Christopher Noon](#)

On July 22, 2010, President Obama signed into law the Improper Payments Elimination and Recovery Act of 2010 (the “Act”). The Act significantly modifies and expands the Improper Payments Information Act of 2002 by placing a greater obligation on the federal government to reduce the amount of improper payments made every year. The President estimated that approximately \$110 billion was improperly paid by the government last year, including improper payments made to government contractors. The new legislation will now require executive agencies to conduct recovery audits in an effort to reduce this figure by \$50 billion by 2012.

The Act requires that every agency conduct “recovery audits with respect to each program and activity of the agency that expends \$1,000,000 or more annually.” If past is prologue, such a renewed focus on auditing will likely create greater scrutiny of programs at all levels. Moreover, the Act specifically permits agencies to outsource the performance of these recovery audits. Any agency that decides to contract for these services, however, must include the prescribed mandatory terms and conditions in the contract. These contractor-auditors will be required not only to notify the agency of any identified overpayments, provide periodic reports on the conditions causing the identified overpayments, and make recommendations on how to mitigate overpayments, but they are also required to report “credible evidence of fraud or vulnerabilities to fraud,” and must specifically train their personnel “on identification of fraud.” This privatization of fraud investigators raises a series of questions, not the least of which are what constitutes “credible evidence of fraud?” and what is a “vulnerability to fraud?”

The Act also gives agencies the power to grant these contractors administrative authority when performing these recovery audits. Under section 2(h)(2)(C) of the Act, agencies may grant authority to these contractors to take administrative actions on behalf of the agency, including notifying contractors of potential overpayments made and responding to questions concerning potential overpayments. However, the Act specifically prohibits these contractors from having any authority to make final determinations relating to whether any overpayment occurred and whether to compromise, settle, or terminate overpayment claims.

The new audit requirements are certainly intended to focus on the recovery of overpayments and reduction of such future improper payments but whether they have that effect remains to be

seen. Contractors, agencies, taxpayers, Medicare recipients, etc. are already subject to numerous, and some may say duplicative and overlapping, government audits. How adding yet another audit to the mix is supposed to cure the problem is a question the statute simply does not address.

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