

## MEMORANDUM

**TO: All Chief Financial Officers**

**FROM: Linda Springer, Controller, OMB**

**DATE: September 26, 2003**

**SUBJECT: Implementation of P.L. 107-300 – Recap of Individual Agency Meetings**

OMB recently met with all of the CFO Act agencies regarding the implementation of P.L. 107-300. In general, I am pleased with the outcome of these meetings. While some agencies are not as far along as others, it is obvious that all agencies are making concerted efforts to comply with this new legislation.

OMB has compiled a list of frequently asked questions and answers, which has been attached for your review. I have also included information about the Department of State's Erroneous Payments Work Plan so that other agencies may use its model as a best practice.

By November 30, 2003, all CFO Act agencies are required to submit to OMB their plan for implementation of P.L. 107-300. (A draft outline for this submission has been attached for your review.) In general, the erroneous payments plan should include the following:

- Program inventory
- Programs to be statistically sampled due to the level of risk that may be present
- Tentative correction action plan to address programs where sampling confirmed 2.5% and \$10 million in erroneous payments
- Baseline plus improvement targets for the next three fiscal years
- An update on the implementation of the recovery auditing.

Please share this memo and the attachments with the appropriate individual handling erroneous payment initiatives at your agency.

Should you have further questions or concerns regarding the requirements or other matters related to P.L. 107-300, please feel free to contact Sally Clark, U.S. Department of Education, at 202-401-2616, or Robert Batson, OMB, at 202-395-3978.

Attachments:  
Frequently Asked Questions  
State Department Example  
Draft Outline

## Frequently Asked Questions Implementation of P.L. 107-300

1. What do agencies need to submit in 2003 and in subsequent years?
  - *All CFO Act agencies should submit to OMB their plan for implementation of P.L. 107-300 by November 30, 2003. (Details on previous page.)*
  - *In the FY 2003 PAR, agencies must report only on those programs currently covered under Section 57 of OMB Circular A-11.*
  - *In the FY 2004 PAR and in subsequent reports, agencies shall report on those programs that qualify under the four steps outlined in the OMB guidance to P.L. 107-300. Agencies shall also continue to report on those programs listed in Circular A-11.*
  
2. What exactly does it mean that all A-11 programs are “grandfathered” into the statistical sampling process? What if they do not meet either threshold?
  - *In the FY 2004 PAR and in subsequent reports, agencies must continue to estimate and reduce erroneous payments on those programs covered by Section 57 of the A-11, regardless of whether the programs would meet the thresholds described in the OMB guidance to P.L. 107-300. However, as provided for in the former Section 57 of A-11, agencies may continue to make the case that the programs listed there are not susceptible to significant erroneous payments.*
  
3. When do you use the 2.5% and \$10 million thresholds, and when is it only the \$10 million that should be considered?
  - *Agencies are required to annually review all programs and activities and to identify those which may be susceptible to significant erroneous payments. OMB has defined significant erroneous payments as those annual erroneous payments in the program that exceed BOTH 2.5% of program payments and \$10 million. Thus, the program must have a potential error rate of greater than 2.5% and a potential amount of erroneous payments greater than \$10 million.*
  - *After the initial risk assessment has been made, and the agency believes that a program is susceptible to a significant risk of erroneous payments, it must proceed with producing a statistically valid error rate for the program. Once a statistically valid error rate is established, all programs with errors in excess of \$10 million, regardless of the rate, are subject to the reporting requirements of the Act.*

4. How do we proceed in the areas of grants? What about third party payments? Can statistical sampling be added to the auditor's statement of work under the Single Audit Act?
  - *Under the Act, agencies shall examine the risk of erroneous payments in all programs and activities they administer, including all competitive and block/formula grant programs.*
  - *OMB recognizes the difficulties and challenges involved in agency efforts to reduce errors of third party payments. However, it is important that agencies acknowledge the importance of reducing such errors and must begin to take steps toward assessing and reducing them. The Erroneous Payments Working Group will continue to examine this issue and determine guidance and best practices to assist the agencies in their efforts.*
  - *Yes, statistical sampling may be added to the auditor's statement of work.*
  
5. Can recovered funds be used to pay for statistical sampling contractor work under the auspices of management improvements? What other ways can agencies request addition funds for FY 04 to pay for contractors to perform this task?
  - *Yes, recovered funds may be used to pay for statistical sampling contractor work.*
  - *Agencies may request additional funds in their annual budget submissions.*
  
6. May funds recovered through the recovery auditing process that are from prior fiscal years be used in the current fiscal year for paying the auditor, making management improvements, etc.?
  - *Money recovered through the recovery auditing process from prior fiscal years may be used to reimburse both for the expenses actually incurred and for payment to service contractors, regardless of the fiscal year in which the money is recovered.*
  - *Other funds recovered through the recovery audit process shall be credited to the appropriations from which the erroneous payments were made. In those cases, the funds are merged with the remaining appropriations and shall be available for the same purposes and period for which the appropriations are available. Thus, recovered funds may be used in a subsequent fiscal year so long as the appropriations to which they are credited remain available in such subsequent year. If there is no appropriation available, any amounts recovered are returned to the Treasury.*

7. Are there established percentages for what amount of recoveries goes to management improvements once the recovery auditor has been paid?

- *No, there are no established percentages as to how recoveries are to be used.*