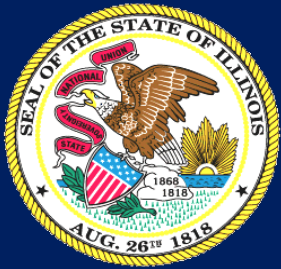

State of Illinois
Office of the Auditor General



Performance Audit of the

Vendor Payment Program

June 29, 2021

Frank J. Mautino
Auditor General

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OFFICE OF THE AUDITOR GENERAL
FRANK J. MAUTINO

*To the Legislative Audit Commission, the Speaker
and Minority Leader of the House of Representatives,
the President and Minority Leader of the Senate, the
members of the General Assembly, and the
Governor:*

This is our report of the performance audit of the Vendor Payment Program.

The audit was conducted pursuant to Public Act 100-1089. This audit was conducted in accordance with generally accepted government auditing standards and the audit standards promulgated by the Office of the Auditor General at 74 Ill. Adm. Code 420.310.

The audit report is transmitted in conformance with Sections 3-14 and 3-15 of the Illinois State Auditing Act.

SIGNED ORIGINAL ON FILE

FRANK J. MAUTINO
Auditor General

Springfield, Illinois
June 2021



Performance Audit of the Vendor Payment Program

Background:

Public Act 100-1089, effective August 24, 2018, amended the State Prompt Payment Act to codify the Vendor Payment Program (Program). The Public Act also required the Auditor General to conduct a performance audit of the Program that included a review of the administration of the Program and compliance with requirements applicable to participating vendors, qualified purchasers, qualified accounts receivable, and financial backer disclosures. The audit shall cover the Program's operations for fiscal years 2019 and 2020.

The Program was developed so that vendors awaiting payment by the State could assign their receivables and any accompanying prompt payment interest, in exchange for immediately receiving payment for 90 percent of the receivable and ultimately receiving 100 percent.

The Department of Central Management Services (CMS) and the Illinois Office of the Comptroller (IOC) administer the Program which, during FY19 and FY20, consisted of five qualified purchasers who purchased over \$2.1 billion in receivables. The State paid the five qualified purchasers over \$352 million in prompt payment interest penalties during FY19 and FY20.

Key Findings:

- CMS and the IOC, while having authority to administer the Program, do not have any agreement that **details the responsibilities of each agency** in administering the Program.
- CMS **failed to document** the application periods for those entities seeking to become qualified purchasers in the Program. The failure led CMS to inform an Illinois-based minority-owned firm that attempted to become a potential qualified purchaser that the application period was closed. However, CMS subsequently approved four other qualified purchasers over the next three months immediately following this communication.
- The selection of qualified purchasers for the Program is an important decision that should be **guided by sound criteria**. While CMS identified criteria for selection, that **criteria was not consistently followed**. In addition, **CMS could not tell us** who specifically made the decisions to approve entities seeking to become qualified purchasers and **CMS had not maintained documentation** to support how qualified purchasers for the Program were selected. Furthermore, from what documentation is available, it appears CMS allowed and facilitated the purchase of receivables by a qualified purchaser that did not have all formalized documentation submitted for selection to the Program.
- CMS and the IOC have not enforced Program Terms relative to Deferred Payment Reserve Accounts for the Program.
- CMS and the IOC allow qualified purchasers to submit financial backer disclosures after the fact. Disclosures due July 1, 2020, had yet to be published by CMS by March 31, 2021. The IOC published the disclosures on March 31, 2021. Therefore, the public had **639 days of not knowing who was providing financial backing for qualified purchasers participating in the Program**. We found that disclosures were not always filed timely and that CMS and the IOC do not know whether the disclosures are accurate.
- While the IOC allows State vendors to receive payments electronically, qualified purchasers under the Vendor Payment Program (Program) **do not have the same opportunity**. Qualified purchasers reported **over \$7.2 million in payments** made under the Program were mailed to a party other than the qualified purchaser. We found payments mailed to: an incorrect qualified purchaser; an incorrect sub-participant; and the vendor as opposed to the qualified purchaser.
- CMS and the IOC have not taken the necessary actions to confirm that all qualified purchasers have complied with the monthly reporting requirements for the Program. This has **resulted in missing data** on the monthly reporting that occurred during FY19 and FY20. Additionally, the **guidance on what should be reported is inconsistent** with the directives from the State Prompt Payment Act.

- CMS allowed qualified purchasers in the Program to submit, for approval and acknowledgment, receivables which were not yet eligible under the State Prompt Payment Act.
- CMS and the IOC have allowed qualified purchasers to operate the payment process under the Program in violation of the Program Terms. This can result in one qualified purchaser having a competitive advantage over another if its payment terms are more generous than another qualified purchaser.
- CMS and the IOC did not enforce Program Terms when they allowed participating vendors to sell receivables among different qualified purchasers.
- The IOC does not have a plan for payment of interest penalties under the Program. This lack of a plan has resulted in delayed payments which has a negative impact on both qualified purchasers and State vendors. In our sample of interest payments during FY19-FY20, **payments were made between 0 and 547 days from when the State agencies requested the payments.**

Key Recommendations:

The audit report contains eleven recommendations directed to CMS and the IOC:

- CMS and the IOC should determine which activities each agency has responsibility for under the Vendor Payment Program and memorialize those responsibilities in an Intergovernmental Agreement.
- CMS should comply with State rules and define an application period when it seeks to add qualified purchasers to the Vendor Payment Program.
- CMS should perform the review necessary and document the selection process, including testing of applicant information technology capabilities, for qualified purchasers in the Vendor Payment Program.
- CMS and the IOC should enforce the requirement of the maintenance and review of Deferred Payment Reserve Accounts under the Vendor Payment Program. Additionally, the IOC and CMS should make a definite determination as to whether the existing qualified purchasers are exempt from maintaining a Deferred Payment Reserve Account.
- CMS and the IOC should clarify when the General Assembly expects financial backer disclosures to be filed for the Vendor Payment Program. Additionally, CMS and the IOC should consider revising the joint administrative rules to codify financial backer disclosures, including when those disclosures need to be filed. Finally, CMS and the IOC should ensure that all qualified purchasers are submitting all required information on the financial backer disclosures, and in a timely manner.
- The IOC should take the steps necessary to eliminate sending payments under the Vendor Payment Program to the incorrect entity. Additionally, the IOC should consider having vendors and qualified purchasers contact the IOC when State payments have been misdirected. Finally, the IOC should determine the cost of processing payments on hardcopy warrants for the Program to determine whether it is the most cost effective process.
- CMS and the IOC should take the steps necessary to make all monthly reporting criteria be consistent for the Vendor Payment Program. Additionally, CMS and the IOC should confirm that all required information is submitted by the qualified purchasers on the monthly reports.
- CMS should enforce the requirements of the State Prompt Payment Act relative to only eligible receivables being included in the assignment agreements submitted by qualified purchasers. If CMS believes the inclusion of receivables less than 90 days old is appropriate it should seek changes to the Act and the Vendor Payment Program Terms.
- CMS and the IOC, as the parties responsible for the Vendor Payment Program, should ensure that qualified purchasers operate under the Program Terms relative to the payment process.
- CMS and the IOC should follow the Program Terms for the Vendor Payment Program and only allow participating vendors to utilize a single qualified purchaser unless that qualified purchaser has violated terms of the assignment agreement or Program. Additionally, CMS should maintain documentation to support why it approved to allow a participating vendor to utilize more than one qualified purchaser at a time.
- The IOC should develop a plan for when interest penalty payments should be made under the Vendor Payment Program.

This performance audit was conducted by the staff of the Office of the Auditor General.

Report Digest

Effective August 24, 2018, Public Act 100-1089 amended the State Prompt Payment Act (Act) to codify the Vendor Payment Program (Program) that had been established under the Illinois Administrative Code. Additionally, Public Act 100-1089 required the Office of the Auditor General to perform a performance audit of the Program. The Public Act contained several issues to examine. Our assessment of these issues is shown in Digest Exhibit 1. (page 1)

Digest Exhibit 1 ASSESSMENT OF AUDIT ISSUES

Audit Issue	Auditor Assessment
<i>Review of the administration of the Program.</i>	<ul style="list-style-type: none"> Auditors found instances of insufficient Program administration by the Department of Central Management Services (CMS) and the Illinois Office of the Comptroller (IOC) including: not having documented application periods; lack of documentation to support selection of qualified purchasers; failure to enforce deferred payment reserve account requirements; misdirection of payments due to qualified purchasers; monthly reporting deficiencies; and no plan for the payment of interest due to qualified purchasers. (pages 12-13, 14-22, 29-38, 50-55)
<i>Review of compliance with applicable requirements by participating vendors.</i>	<ul style="list-style-type: none"> Auditors found some participating vendors sold receivables among different qualified purchasers in violation of Program Terms. (pages 47-49)
<i>Review of compliance with applicable requirements by qualified purchasers.</i>	<ul style="list-style-type: none"> Auditors found that CMS and the IOC have allowed qualified purchasers to operate the payment process in violation of the Program Terms which can result in one qualified purchaser having a competitive advantage over another. (pages 42-46)
<i>Review of compliance with applicable requirements for qualified accounts receivable.</i>	<ul style="list-style-type: none"> Auditors found that CMS allowed qualified purchasers to submit receivables which were not yet eligible under the State Prompt Payment Act. (pages 39-41)
<i>Review of compliance with applicable requirements for financial backer disclosures.</i>	<ul style="list-style-type: none"> Auditors found: CMS and the IOC allow qualified purchasers to submit financial backer disclosures after the fact; the public had 639 days of not knowing who were providing financial backing for qualified purchasers for disclosures due in July 2020; disclosures were not always filed timely; and CMS and the IOC do not know whether the disclosures were accurate. (pages 23-28)

Source: OAG assessment of the audit determinations contained in Public Act 100-1089.

Background

In the fall of 2010, the State conducted a small pilot program allowing vendors awaiting payment by the State to assign their receivables and any accompanying prompt payment interest, in exchange for immediately receiving payment for 90 percent of the receivable and ultimately receiving 100 percent. In July 2011, formalized rules were approved to operate the Program. These rules authorized the IOC and CMS to “*establish and implement*” the Program. The Program was developed due to a cash flow deficit experienced by the State that had resulted in State vendors’ payments being delayed. (page 1)

State Vendor Participation

According to CMS information, the number of vendors taking advantage of the benefits of the Program **increased 63 percent** between FY16 (132 vendors) and FY20 (215 vendors). (page 2)

Qualified Purchasers

Qualified purchasers are entities approved by CMS to purchase receivables from State vendors. During FY19 and FY20 there were **five qualified purchasers** that operated within the Program. The five qualified purchasers **reported over \$2.1 billion for 6,164 receivables purchased during FY19-FY20**.

Qualified purchasers must report monthly information to CMS and the IOC relative to the Program. We examined and summarized the monthly reports as well as made some computations to provide information to readers of this report. That information, **for qualified purchasers that participated in the audit**, is provided in Digest Exhibit 2. (page 2)

Digest Exhibit 2

VENDOR PAYMENT PROGRAM INFORMATION

FY19-FY20

	VAP	VCF	PAY	IFP
# Receivables Assigned	5,643	135	137	208
\$ Receivables Assigned	\$1,086,294,105	\$157,218,078	\$66,260,760	\$880,499,188
# State Base Invoice Payments	7,203	120	571	319
\$ State Base Invoice Payments	\$1,527,347,754	\$148,641,788	\$160,162,761	\$937,035,012
# State Interest Payments	3,978	105	18	244
\$ State Interest Payments	\$207,287,139	\$49,805,684	\$14,648	\$95,385,795
Average # Days to Pay Base Invoice	231	351	237	239
Minimum # Days to Make Base Payment	97	108	0	111
Maximum # Days to Make Base Payment	1,304	1,550	1,027	501
Average # Days to Pay Interest Voucher	251	195	86	177
Minimum # Days to Make Interest Payment	82	53	59	0
Maximum # Days to Make Interest Payment	537	379	328	547

Note: VAP – Vendor Assistance Program; VCF – Vendor Capital Finance; PAY – Payplant; IFP – Illinois Financing Partners.

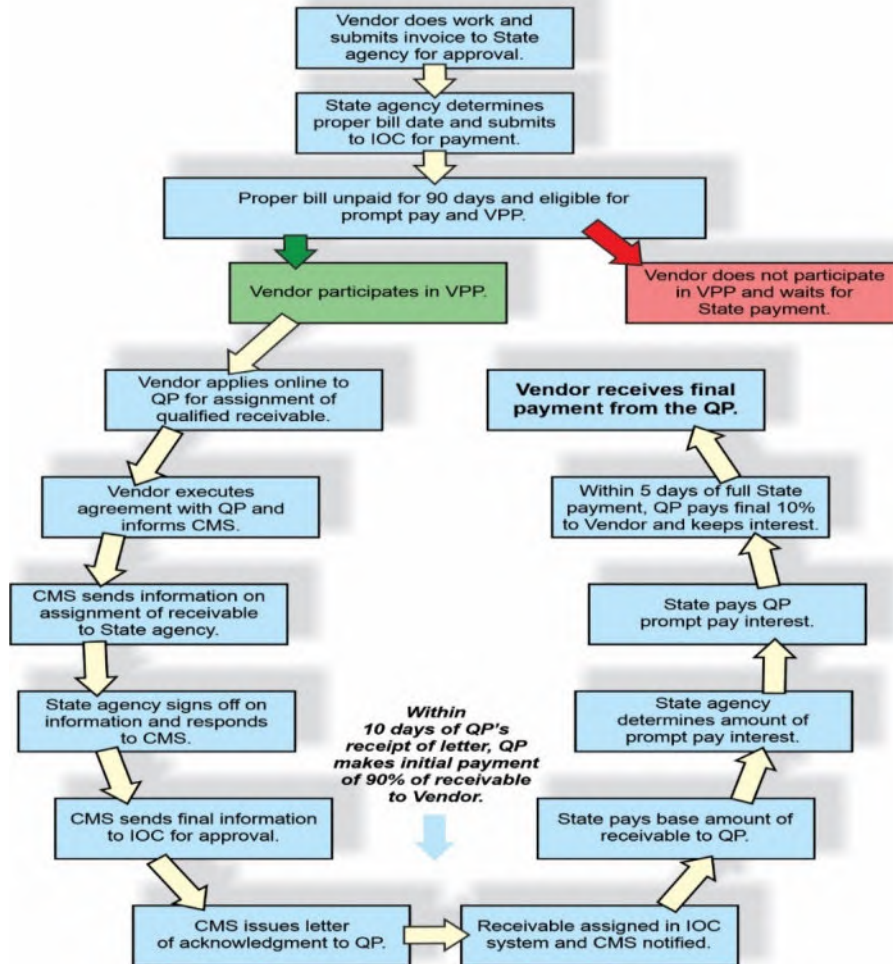
Source: OAG developed.

Prompt Payment Interest Expenditures

Between FY12 and FY20, the IOC reported that the State has paid in **excess of \$1.13 billion** in interest on late payments as prescribed by the State Prompt Payment Act. The IOC told us that it **does not track** the amount of interest that **qualified purchasers are paid** in late payment penalties. We utilized the FY19-FY20 qualified purchaser monthly reporting to determine how the Program interest relates to overall interest paid. We found that the **qualified purchasers received a significant percentage of overall State paid interest. During FY19, qualified purchasers received \$232,837,750** in interest penalty payments. This was 69 percent of all prompt payment interest paid by the State. **During FY20, qualified purchasers received \$119,655,515** in interest penalty payments. This was 73 percent of all prompt payment interest paid by the State. (page 3)

Vendors register online with qualified purchasers during the invoice assignment process. Digest Exhibit 3 provides the flow process for the Program. (page 4)

Digest Exhibit 3
VENDOR PAYMENT PROGRAM
 Process Flowchart



Source: OAG developed from Program information.

Program Administrative Responsibilities

CMS and the IOC, while having authority to administer the Vendor Payment Program, do not have any agreement that details the responsibilities of each agency in administering the Program.

While the State Prompt Payment Act (30 ILCS 540) and the administrative rules (74 Ill. Adm. Code 900.125) give CMS and the IOC the **authority to operate** the Program, **neither directive details the responsibilities and duties** of each of the agencies. Both the IOC and CMS utilize **multiple functional areas** to operate the Program although multiple areas do not translate into multiple staff.

CMS utilizes officials from the legal area **to operate the Program**. This process has **apparently resulted in delays** in the designation of qualified purchasers. On May 27, 2020, a Comptroller official reported that the IOC role in the Program is, *“limited to processing payment requests and then month end reporting requirements.”* [Emphasis added.] However, the joint administrative rules of the IOC and CMS, and the State Prompt Payment Act as amended by Pubic Act 100-1089, **give the IOC the ability to terminate the Program as well as review a qualified purchaser’s performance under the Program.** (74 Ill. Adm. Code 900.125(g) (i); 30 ILCS 540/8(g)(i)) (pages 6-11)

Qualified Purchaser Application Period

CMS **failed to document** the application periods for those entities seeking to become qualified purchasers in the Vendor Payment Program. The failure led CMS to inform an Illinois-based minority-owned firm that attempted to become a potential qualified purchaser that the application period was closed. However, CMS subsequently approved four other qualified purchasers over the next three months immediately following this communication.

During the audit period of FY19 and FY20, there were **five qualified purchasers** in the Program. Digest Exhibit 4 provides a listing of the eight entities that have been designated as a qualified purchaser since Program inception in 2011. A CMS official reported on October 26, 2020, *“In talking with our legal area and researching myself, I have not discovered an application period or schedule. Possibly we will discover some of this in our e-mail search, but for now my knowledge is that there was never a ‘formal’ application period.”*

Digest Exhibit 4
QUALIFIED PURCHASERS IN VENDOR PAYMENT PROGRAM
 2012-2020

PURCHASER	APPROVAL DATE	END DATE
Vendor Assistance Program	12/18/12 ⁽¹⁾	Current
Capital Access Program Trust	08/07/13	(2)/(3)
Muni Pay Me	02/24/14	(2)
Payplant	03/28/14	Current
Capital Restoration Fund of IL	05/12/14	(2)
Vendor Capital Finance	05/20/14	Current
Illinois Financing Partners	06/29/16	Current
Vendor Premium Payment Assistance, LLC	06/01/18	Current

Notes:

⁽¹⁾ Qualified purchaser stated it first purchased receivables in 2011.

⁽²⁾ CMS could not find evidence of final date in the Program.

⁽³⁾ CMS reported qualified purchaser was approved yet never had an assigned receivable.

Source: OAG developed from Program information.

While CMS could provide no documentation on application periods, it informed entities seeking to become qualified purchasers that it was **not accepting applications**:

- A Peoria-based entity sought to become a qualified purchaser in February 2014. The entity had just become **certified as a Minority-Owned Business Enterprise under the Business Enterprise Program**. In a February 19, 2014 email, an official for the entity informed a CMS official that it wanted to apply to qualify as a qualified purchaser and that banks had offered to establish a large line of credit for this purpose. The CMS official, after discussing with the CMS Chief Operating Officer replied, *“As I suspected, the application period for bringing in new Qualified Purchasers (QP) is closed at this time.”* **CMS approved four qualified purchasers after this email date, from February 24, 2014, through May 20, 2014.**
- On March 9, 2015, a CMS official informed an official from a prospective qualified purchaser that *“Also, the Vendor Payment Program (VPP) is closed to bringing in more Qualified Purchasers (QP). We have six at the present time. This program closed to any new QPs over a year ago. There are no plans at the present time of re-opening for new QPs.”* **Approximately a year later, in June 2016, CMS approved Illinois Financing Partners as a qualified purchaser in the Program.** (pages 12-13)

Lack of Documentation to Support Qualified Purchaser Decisions

The selection of qualified purchasers for the Program is an important decision that should be **guided by sound criteria**. While CMS identified criteria for selection, that **criteria was not consistently followed**. In addition, **CMS could not tell us** who specifically made the decisions to approve entities seeking to become

qualified purchasers and CMS **had not maintained documentation** to support how qualified purchasers for the Program were selected. Furthermore, from what documentation is available, it appears CMS allowed and facilitated the purchase of receivables by a qualified purchaser that did not have all formalized documentation submitted for selection to the Program.

CMS developed a Checklist for Interested Qualified Purchasers for the Program. The checklist, which is annotated back to the Program Terms, is divided into five sections. However, CMS did not appear to independently verify the information on the checklist. A CMS official reported to auditors that the official believed the information on the checklists were “*self-reported – my understanding is that review and approval was conducted by CMS Legal.*” CMS also utilized documents that **were not detailed** in any guidance for the selection of qualified purchasers.

Approving Qualified Purchaser Prior to Finalized Documentation

On June 29, 2016, a former CMS Director sent an approval letter to Illinois Financing Partners to confirm Illinois Financing Partners (IFP), LLC, IFP Funding, LLC, and IFP Funding Trust to participate in the Program.

The 2nd paragraph of that letter stated, “*This approval is conditioned upon IFP’s implementation of a fully operational and CMS-approved IT [Information Technology] platform in conformance with the requirements of the Program Terms and as referenced in the checklist submitted to CMS by IFP on June 21, 2016, within six (6) months of this letter.*” We had not seen language like this in other approvals so we asked CMS why the qualified purchaser was allowed to start without formalized documentation. CMS replied on March 9, 2021, that “*CMS does not have documentation and cannot address these issues below.*”

Evaluating Potential Qualified Purchasers

During the audit we examined the results of a query into emails for certain CMS officials. From that review we found **34 instances** where there were emails from entities about the designation of qualified purchaser. **CMS did not have documentation to support how it evaluated these entities.**

A March 5, 2019 email from the CMS Director asked how CMS determined whether a qualified purchaser is eligible to participate in the Program. A CMS official replied, “*The original QP was VAP approved in 2011/2012 the latest was VPPA that was finalized in May 2018. We have 5 others that have been active over the course of the program; 2 that are no longer active....They were randomly approved...to my knowledge there wasn’t an official application period, even though that is how the statute reads.*” [Emphasis added.] (pages 14-19)

Deferred Payment Reserve Accounts

CMS and the IOC have not enforced Program Terms relative to Deferred Payment Reserve Accounts for the Vendor Payment Program. (pages 20-22)

Financial Backer Disclosures

CMS and the IOC allow qualified purchasers to submit financial backer disclosures after the fact. Disclosures due July 1, 2020, had yet to be published by CMS by March 31, 2021. The IOC published the disclosures on March 31, 2021. Therefore, the public had **639 days of not knowing who was providing financial backing for qualified purchasers participating in the Vendor Payment Program (Program)**. We found that disclosures were not always filed timely and that CMS and the IOC do not know whether the disclosures are accurate.

When Public Act 100-1089 codified the Program into statute, it added a requirement that qualified purchasers disclose their financial backers. However, **neither CMS nor the IOC amended their joint administrative rules to include this financial backer disclosure.**

The State Prompt Payment Act (30 ILCS 540/9) requires the submission of financial backer disclosures. CMS and the IOC define the filing deadline of July 1st to be **disclosure after the fact**, meaning the qualified purchasers provide the information not before the period begins but after. We question **how transparent this practice is given that the financial backers are not known until after the reporting period.**

The General Assembly appears to have wanted financial backer information disclosed on an ongoing basis, not after the fact given that there was **an immediate effective date** on Public Act 100-1089, August 24, 2018, and the General Assembly required initial disclosures within 60 days of the effective date, by October 23, 2018. The Financial Disclosure Form itself requires an **immediate** remedy when the submitted disclosure is no longer accurate. The Form requires disclosing entities to update the form within 30 business days of any change in the disclosure. This demonstrates that CMS and the IOC feel the change necessitates a quicker reporting than waiting until the next July 1st.

On March 31, 2021, the IOC posted to its website the financial backer disclosures that were due on July 1, 2020 – a period of 273 days. CMS had not published the disclosures. Since CMS and the IOC believe the disclosures are not due until after the period, the disclosures due July 1, 2020 would be for the financial backers on July 1, 2019. Therefore, the public had 639 days of not knowing who the financial backers were for the Program.
(pages 23-28)

Misdirected Payments

While the IOC allows State vendors to receive payments electronically, qualified purchasers under the Vendor Payment Program (Program) **do not have the same opportunity**. Qualified purchasers reported **over \$7.2 million in payments** made under the Program were mailed to a party other than the qualified purchaser. We found payments mailed to: an incorrect qualified purchaser; an incorrect sub-participant; and the vendor as opposed to the qualified purchaser.

Misdirected payments occur when payments are sent to the wrong party. We asked the IOC, on October 29, 2020, if it thought the misdirection of State payments to the incorrect party was a problem for the Program. The IOC replied, *“Not really. The volume appears to be low and the parties of the contract are responsible to address any potential receivable processing issue.”*

We later met with IOC officials on November 19, 2020, and informed them that during the audit, we asked the four qualified purchasers that agreed to participate in the audit about misdirected payments. **Qualified purchasers provided the following information:**

- Illinois Financing Partners (IFP) reported nine **base invoice checks**, totaling \$452,302, had incorrectly been sent to the vendor as opposed to IFP.
- IFP reported that all 358 of the non-group health insurance **penalty payments**, totaling **\$841,372, incorrectly went to the vendor as opposed to IFP**. While IFP was able to recover most of the payments, four warrants were permanently “missing.” IFP also reported on October 27, 2020, *“We’re still awaiting over \$100,000.00 of remaining PPP [Prompt Payment Penalty] as part of this program and at this point just assume it will be misdirected despite our documented efforts and persistent communications with CMS and IOC to address the problem.”*
- Vendor Assistance Program (VAP) provided auditors a spreadsheet showing 6,352 penalty payments, totaling **\$5,941,277, incorrectly went to the vendor as opposed to VAP**.
- Payplant and Vendor Capital Finance also reported issues with misdirected payments. (pages 29-34)

Monthly Reporting Deficiencies

CMS and the IOC have not taken the necessary actions to confirm that all qualified purchasers have complied with the monthly reporting requirements for the Vendor Payment Program. This has resulted in missing data on the monthly reporting that occurred during FY19 and FY20. Additionally, the guidance on what should be reported is inconsistent with the directives from the State Prompt Payment Act. (pages 35-38)

Ineligible Accounts Receivable

CMS allowed qualified purchasers in the Vendor Payment Program to submit, for approval and acknowledgment, receivables which were not yet eligible under the State Prompt Payment Act. (pages 39-41)

Violation of Program Terms - Monitoring

CMS and the IOC have allowed qualified purchasers to operate the payment process under the Vendor Payment Program in violation of the Program Terms. This can result in one qualified purchaser having a competitive advantage over another if its payment terms are more generous than another qualified purchaser.

The Program has a set of Program Terms that participating State vendors and qualified purchasers have to follow. These Program Terms are dated December

13, 2012. Additionally, the Program Terms set out how CMS must monitor the Program. The Program Terms define the payment process to be utilized by the qualified purchasers as part of the Program. Payments are to be made in two installments based on the Program Terms:

- 90 percent of the receivable purchase price is to be paid as an initial payment to the State participating vendor within 10 days of CMS acknowledgement; and
- 10 percent of the receivable purchase is to be paid within 5 days of the qualified purchaser receiving the payment from the State for the prompt payment interest penalty.

During the audit, we reviewed a number of assignment agreements and examined payments made under the Program Terms. We found a number of instances where the qualified purchasers were **not operating under the 90/10 two-payment process** detailed in the Program Terms.

CMS was apparently aware of these non-Program Term processes. It admitted, in a September 14, 2020 email, *“The QPs have made changes in the past [to the assignment agreement percentages], but we curtailed that.”* After the passage of Public Act 100-1089, CMS sent a correspondence, on June 26, 2019, to the qualified purchasers that informed them of this audit that would be conducted and reminding them of the terms and condition of the Program. Included in that correspondence was a reminder that there should be a 90/10 payment process with an exception for employee benefits and life insurance receivables which CMS allows for a 100 percent payment up front after CMS acknowledgement of the purchase. Regardless of that correspondence, CMS **should not have allowed** qualified purchasers to deviate from the Program Terms, terms which have been in place since 2012. CMS also told us, *“If deviations were approved by legal they were not always communicated to our operational area, but that was an ongoing problem we had.”* (pages 42-46)

Vendors with more than one Qualified Purchaser

CMS and the IOC did not enforce Program Terms when they allowed participating vendors to sell receivables among different qualified purchasers. The Program Terms address many requirements including assigning receivables between a participating vendor and a qualified purchaser.

Program Terms Section II.7 states, *“If a Qualified Purchaser has complied with the terms of the Program, as well as the terms of any Assignment Agreement between a Qualified Purchaser and a Participating Vendor, such Participating Vendor will be prohibited from assigning any of its Qualified Account Receivables to any other Qualified Purchaser under this Program, other than its existing Qualified Purchaser or an entity managed or affiliated with such existing Qualified Purchaser, unless the Qualified Purchaser with which the Participating Vendor previously contracted is temporarily or permanently not participating in the Program.”* [Emphasis added.]

During our audit work, we found evidence that participating vendors had sold receivables to more than one qualified purchaser:

- We combined the FY19-FY20 monthly reports submitted by the qualified purchasers, including the submitted information on receivables assigned, to test and see if participating vendors had sold receivables to more than one qualified purchaser. We found five instances during those two fiscal years where a participating vendor had sold receivables, at different times, to multiple qualified purchasers. Digest Exhibit 5 provides information on the five cases including the number and dollar amount of receivables sold.
- Also, prior to FY19, we found that a State vendor, Health Alliance, had originally sold receivables to another qualified purchaser, Vendor Capital Finance. An official from Vendor Capital Finance stated that Health Alliance switched to another qualified purchaser (Vendor Assistance Program) because that qualified purchaser paid 100 percent upfront.
- We found that while CMS was aware that Health Alliance had sold to multiple qualified purchasers, an official told us on February 9, 2021, that the official was **not aware of other State vendors with more than one qualified purchaser**. We would note, as shown in Digest Exhibit 5, that there were between 3 and 234 receivables purchased. We provided the information in Digest Exhibit 5 to CMS and CMS confirmed that the “*vendors did sell to multiple QP’s during FY19-FY20.*”
- We were told by the CMS official, in response to our question of who would have approved switching to other qualified purchasers that “*The decision was made to allow this prior to my arrival, but I believe it was approved by CMS legal department. I have not seen documentation of the approval.*”

Digest Exhibit 5
PARTICIPATING VENDORS SELLING RECEIVABLES TO MORE THAN ONE QUALIFIED PURCHASER
 FY19-FY20

Participating Vendor	Qualified Purchaser	Count of Receivables	Total Assigned Receivables
Advanced Commodities	IFP	92	\$2,716,108
	VAP	234	\$6,703,406
Fisher Scientific	Payplant	13	\$33,972
	VPPA	33	\$45,313
Health Alliance	IFP	51	\$874,188,166
	VAP	3	\$51,189,606
Healthcare Service Corporation	Payplant	7	\$65,860,094
	VAP	42	\$445,064,078
Illinois Bell Telephone Company	VPPA	7	\$2,966,864
	VAP	90	\$23,600,636

Note: IFP – Illinois Financing Partners; VAP – Vendor Assistance Program; VPPA – Vendor Premium Payment Assistance.

Source: OAG developed from CMS documentation.

Most importantly, the only way under the Program Terms to switch qualified purchasers is to **have a qualified purchaser not operate under the terms of the Program** or the assignment agreement. We asked CMS if it had any documentation to support that any qualified purchaser had not complied with Program Terms. On February 9, 2021, CMS replied, *“No, CMS does not have documentation to show that a certain QP had not complied with the terms of the Program.”* [Emphasis added.]

A CMS official reported to auditors, *“It was previously interpreted by CMS that multiple QP’s could be used if they didn’t simultaneously try to assign the same receivable. We cannot find documentation of this decision.”* The official added that the decision, **to allow the practice which violated the Program Terms**, *“predated FY19 and FY20, but [CMS official] remembers it was made by [former CMS Assistant Director] in connection with [former CMS Deputy General Counsel].”* CMS could not provide documentation to support the decision. (pages 47-49)

Prompt Payment Interest

The IOC does not have a plan for payment of interest penalties under the Program. This lack of a plan has resulted in delayed payments which has a negative impact on both qualified purchasers and State vendors. In our sample of interest payments during FY19-FY20, **payments were made between 0 and 547 days from when the State agencies requested the payments.**

Prompt payment interest amounts are determined by the individual State agencies once the base invoice has been paid by the IOC. The State agencies then submit dated vouchers for the interest payments to be made by the IOC.

During the audit we selected a sample of penalty receivable payments for testing. We obtained the dates State agencies submitted vouchers to the IOC for payment of the interest penalties and then compared that voucher date to the date the IOC actually made the payment of the interest penalty to the qualified purchaser to **determine how long the IOC sat on the payment request.** The results of our analysis, by qualified purchaser, is presented in Digest Exhibit 6.

Digest Exhibit 6
DELAYS IN PROCESSING PENALTY INTEREST PAYMENTS BY THE IOC
 FY19-FY20 Sample

Qualified Purchaser	Delay Time at the IOC		
	Maximum # Days	Average # Days	Minimum # Days
Vendor Assistance Program	537	251	82
Illinois Financing Partners	547	177	0
Vendor Capital Finance	379	195	53
Payplant	328	86	59

Source: OAG developed from qualified purchaser and IOC documentation.

The IOC **does not maintain statistics for how long it takes** to pay base payments or the prompt payment interest for vendors not in the Program. Therefore, we were unable to compare the Program penalty payments in our analysis to vendors that chose not to participate in the Program.

The IOC reported, on June 26, 2020, *“Since cash management decisions are made on a daily, if not an hourly basis, there are no given procedures that can account for the constant change of cash balances and receipts to pay for that day’s obligations. Given the severity of the backlog then (and now) the IOC cannot perform in a first-in/first out manner since doing so would negatively impact payments to critical programs that are dependent of state support for their operations.”*

The longer a qualified purchaser has to wait for the interest penalty payment, the longer the State participating vendors have to wait for the remaining 10 percent of the receivable. **Smaller State vendors could possibly be counting on this 10 percent for their business existence.** (pages 50-55)

Audit Recommendations

The audit report contains 11 recommendations directed to CMS and the IOC. CMS agreed with the recommendations. The IOC largely disagreed with the recommendations. The complete responses from CMS and the IOC are included in this report as Appendix F.

This performance audit was conducted by the staff of the Office of the Auditor General.

SIGNED ORIGINAL ON FILE

JOE BUTCHER
Division Director

This report is transmitted in accordance with Sections 3-14 and 3-15 of the Illinois State Auditing Act.

SIGNED ORIGINAL ON FILE

FRANK J. MAUTINO
Auditor General

FJM:MJM

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Glossary and Acronyms

Act	The State Prompt Payment Act.
Applicant	Any entity seeking to be designated as a qualified purchaser.
Application Period	The time period when the Program is accepting applications as determined by the Department.
Assigned Penalties	Penalties payable by the State in accordance with the State Prompt Payment Act that are assigned to the qualified purchaser of an assigned receivable.
Assigned Receivable	The base invoice amount of a qualified account receivable and any associated assigned penalties due, currently and in the future, in accordance with the Act.
Assignment Agreement	An agreement executed and delivered by a participating vendor and a qualified purchaser, in which the participating vendor will assign one or more qualified accounts receivable to the qualified purchaser and make certain representations and warranties.
Base Invoice Amount	The unpaid principal amount of the invoice associated with an assigned receivable.
Bill	The vendor's standard bill or invoice for goods or services.
CMS or Department	The Department of Central Management Services.
IOC	Illinois Office of the Comptroller.
Medical Assistance Program	Any program which provides medical assistance under Article V of the Illinois Public Aid Code, including Medicaid.
Participating Vendor	A vendor whose application for the sale of a qualified account receivable is accepted for purchase by a qualified purchaser under the Program terms.
Program	The Vendor Payment Program.
Prompt Payment Penalties	Penalties payable by the State in accordance with the Act.
Proper Bill	A bill or invoice containing sufficient and correct information necessary to process the payment for a liability of a State agency.
Purchase Price	Means 100 percent of the base invoice amount associated with an assigned receivable minus: (1) any deductions against the assigned receivable arising from State offsets; and (2) if and to the extent

Glossary and Acronyms

exercised by a qualified purchaser, other deductions for amounts owed by the participating vendor to the qualified purchaser for State offsets applied against other accounts receivable assigned by the participating vendor to the qualified purchaser under the Program.

Qualified Account Receivable	An account receivable due and payable by the State that is outstanding for 90 days or more, is eligible to accrue prompt payment penalties under the Act, and is verified by the relevant State agency. A qualified account receivable shall not include any account receivable related to medical assistance programs (including Medicaid) payments or any other accounts receivable, the transfer or assignment of which is prohibited by, or otherwise prevented by, applicable law.
Qualified Purchaser	Any entity that, during any application period, is approved by the Department to participate in the Program on the basis of certain qualifying criteria as determined by the Department.
State Offsets	Any amount deducted from payments made by the State in respect of any qualified account receivable due to the State's exercise of any offset or other contractual rights against a participating vendor. State offsets include statutorily required administrative fees imposed under the State Comptroller Act.
Sub-participant	Any individual or entity that intends to purchase assigned receivables, directly or indirectly, by or through an applicant or qualified purchaser for the purposes of the Program.
Sub-participant Certification	An instrument executed and delivered to the Department by a sub-participant, in which the sub-participant certifies its agreement, among others, to be bound by the terms and conditions of the Program as a condition to its participation in the Program as a sub-participant.
VSI	Vendor Support Initiative. A State of Illinois program that allows vendors to receive funding under the same terms as the Vendor Payment Program for all invoices that do not yet have a State appropriation.

Introduction

Public Act 100-1089, effective August 24, 2018, amended the State Prompt Payment Act (Act) to codify the Vendor Payment Program (Program) that had been established under the Illinois Administrative Code. Additionally, Public Act 100-1089 required the Office of the Auditor General to conduct a performance audit of the Program. The Act states the audit, *“shall include, but not be limited to, a review of the administration of the Program and compliance with requirements applicable to participating vendors, qualified purchasers, qualified accounts receivable, and financial backer disclosures. The audit shall cover the Program's operations for fiscal years 2019 and 2020.”*

Background

In the fall of 2010, the Governor’s Office of Management and Budget (GOMB) and the Illinois Office of the Comptroller (IOC) conducted a small pilot program allowing vendors awaiting payment by the State to assign their receivables and any accompanying prompt payment interest, in exchange for immediately receiving payment for 90 percent of the receivable and ultimately receiving 100 percent. The Department of Central Management Services (CMS) and the IOC filed an emergency rule, to not bind a new incoming Comptroller, in order to operate the pilot program. In July 2011, formalized rules were approved to operate the Vendor Payment Program. These rules authorized the IOC and CMS to *“establish and implement”* the Program.

CMS documentation indicated that the Program was developed due to a cash flow deficit experienced by the State that had resulted in State vendors’ payments being delayed. The vendors affected ranged from small private contractors to

larger entities such as not-for-profit groups, local school districts and public universities, the corrections system, and the Regional Transportation Authority. As a result of the delay in payment of vouchers, vendors were experiencing cash flow deficits and, in some cases, implementing layoffs.

Under the Program, qualified purchasers apply and are approved by CMS to purchase accounts receivable and provide funding under the Program. The qualified purchasers can also use sub-purchasers and other parent companies and/or trusts to provide financial backing. Purchasers are to operate under a Program Terms document. The Program Terms are a set of requirements that include: the establishment of the Program; the operation of the Program; the payment of purchase price/deferred payment reserve account; other obligations of qualified purchasers and sub-participants; adopted amendments; and term and termination. This document is dated December 13, 2012, and **has not been amended** since. CMS stated it understood the Program Terms needed to be updated.

State Vendor Participation

Program Participating Vendors

FY16 – 132 vendors
 FY17 – 164 vendors
 FY18 – 184 vendors
 FY19 – 204 vendors
 FY20 – 215 vendors

According to CMS information, the number of vendors taking advantage of the benefits of the Program **increased 63 percent** between FY16 and FY20. CMS estimated that its Bureau of Benefits providers (health insurance and life insurance providers) **comprise 73 percent of the Program**. See adjacent text box for the numbers of vendors in the Program.

Qualified Purchasers

Qualified purchasers are entities approved by CMS to purchase receivables from State vendors. During FY19 and FY20 there were **five qualified purchasers** that operated within the Program: Vendor Assistance Program, Vendor Capital Finance, Payplant, Illinois Financing Partners, and Vendor Premium Payment Assistance. During the audit we reached out to all five to offer an opportunity to participate in the audit. The only qualified purchaser that **decided not to assist in the audit** was Vendor Premium Payment Assistance. The five qualified purchasers **reported over \$2.1 billion for 6,164 receivables purchased during FY19-FY20**. See Appendix E for a list of the State vendors that sold receivables during that period.

Qualified purchasers must report monthly information to CMS and the IOC relative to the Program. The **criteria** for the information to be contained in these reports comes from the State Prompt Payment Act, joint rules of the IOC and CMS, the Program Terms, and guidance provided by CMS on September 21, 2018.

We examined and summarized the monthly reports as well as made some computations to provide information to readers of this report. That information,

for qualified purchasers that participated in the audit, is provided in Exhibit 1.

Exhibit 1
VENDOR PAYMENT PROGRAM INFORMATION
 FY19-FY20

	VAP	VCF	PAY	IFP
# Receivables Assigned	5,643	135	137	208
\$ Receivables Assigned	\$1,086,294,105	\$157,218,078	\$66,260,760	\$880,499,188
# State Base Invoice Payments	7,203	120	571	319
\$ State Base Invoice Payments	\$1,527,347,754	\$148,641,788	\$160,162,761	\$937,035,012
# State Interest Payments	3,978	105	18	244
\$ State Interest Payments	\$207,287,139	\$49,805,684	\$14,648	\$95,385,795
Average # Days to Pay Base Invoice	231	351	237	239
Minimum # Days to Make Base Payment	97	108	0	111
Maximum # Days to Make Base Payment	1,304	1,550	1,027	501
Average # Days to Pay Interest Voucher	251	195	86	177
Minimum # Days to Make Interest Payment	82	53	59	0
Maximum # Days to Make Interest Payment	537	379	328	547

Note: VAP – Vendor Assistance Program; VCF – Vendor Capital Finance; PAY – Payplant; IFP – Illinois Financing Partners.

Source: OAG developed.

Prompt Payment Interest Expenditures

Prompt Pay Interest Payments

FY12 –	\$86,318,828
FY13 –	\$239,854,795
FY14 –	\$56,141,683
FY15 –	\$54,144,087
FY16 –	\$15,175,706
FY17 –	\$85,998,951
FY18 –	\$98,468,847
FY19 –	\$337,182,987
FY20 –	\$164,004,185

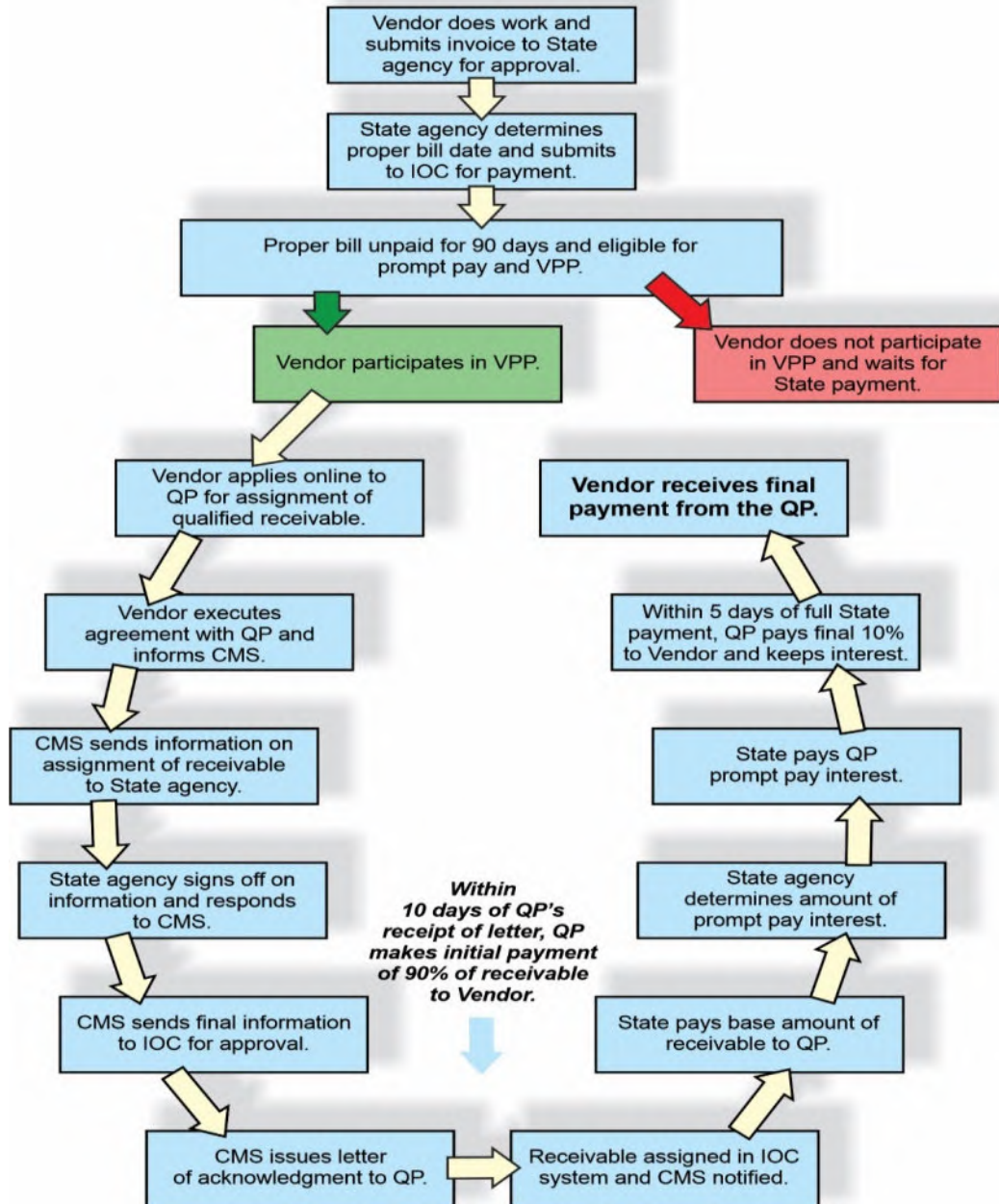
Between FY12 and FY20, the IOC reported that the State has paid in **excess of \$1.13 billion** in interest on late payments as prescribed by the State Prompt Payment Act. See the adjacent text box for the prompt payment interest the State has paid during FY12-FY20.

The IOC told us that it **does not track** the amount of interest **that qualified purchasers are paid** in late payment penalties. We utilized the FY19-FY20 qualified purchaser monthly reporting to determine how the Program interest relates to overall interest paid. We found that the **qualified purchasers received a significant percentage of overall State paid interest**. Only 4 of 5 qualified purchasers received prompt payment interest penalties from the State. One qualified

purchaser, Vendor Premium Payment Assistance, reported zero interest payments under the Program in FY19 and FY20. **During FY19, qualified purchasers received \$232,837,750** in interest penalty payments. This was 69 percent of all prompt payment interest paid by the State. **During FY20, qualified purchasers received \$119,655,515** in interest penalty payments. This was 73 percent of all prompt payment interest paid by the State.

Vendors register online with qualified purchasers during the invoice assignment process. The vendors select the receivable(s) they wish to assign and execute the agreement with the qualified purchaser. The qualified purchaser verifies the validity of the receivables and, after approval by CMS, **will advance 90 percent of the invoice value** to the vendor. The remaining 10 percent will be **paid once the State pays the invoice and prompt pay penalty to the qualified purchaser**. Exhibit 2 provides the flow process for the Program.

Exhibit 2
VENDOR PAYMENT PROGRAM
 Process Flowchart



Source: OAG developed from Program information.

Program Eligibility

In order to be eligible to participate in the Program, a vendor must have a receivable that is eligible to accrue prompt payment interest under the State Prompt Payment Act (30 ILCS 540). The receivable must be **at least 90 days past due** and be free of any liens or encumbrances. A number of State payments **are not eligible** for prompt pay interest. Exhibit 3 provides a listing of excluded payments.

**Exhibit 3
STATE PAYMENTS EXCLUDED FROM PROMPT PAY INTEREST**

- | | |
|--|---|
| • Inter- and Intra-agency payments | • Payments to State employees for personal services |
| • Awards and grants | • Contract retainers for construction contracts |
| • State Board of Education categorical grants | • Community College Board grants |
| • IL Student Assistance Commission grants | • Payments to local governments, including schools |
| • Payments of interest penalties | • Payments made to contractual employees |
| • Payments from non-appropriated funds | • Gratuitous payments to businesses |
| • Payments assigned to third party outside Program | • Barter transactions |
| • Payments made from only federal funds | • Medical and claims payments under Worker’s Compensation |
| • Tax refunds | • State Employees Group Insurance Program payments covered by late payment interest provisions of IL Insurance Code (215 ILCS 5/368a, 370a) |

Source: OAG developed from 74 Ill. Adm. Code 900.120.

Proper Bill

The Program **begins with the designation of a proper bill and proper bill date** by the State agency that received the goods or services from the vendor. A State agency shall approve proper bills or deny bills with defects, in whole or in part, **within 30 days** after receipt (74 Ill. Adm. Code 900.70 (b)). We tested a random sample of receivables purchased by each of the qualified purchasers to determine: (1) whether State agencies have complied with administrative rules for determination of the proper bill date, and (2) that the billed services meet the requirements for the payment of interest through prompt pay legislation. We did not discover any significant deficiencies in the testing.

Program Administrative Responsibilities

CMS and the IOC, while having authority to administer the Vendor Payment Program (Program), do not have any agreement that **details the responsibilities of each agency** in administering the Program.

While the State Prompt Payment Act (30 ILCS 540) and the administrative rules (74 Ill. Adm. Code 900.125) give CMS and the IOC the **authority to operate** the Program, **neither directive details the responsibilities and duties** of each of the agencies. CMS and the IOC confirmed this finding.

Functional Areas Involved

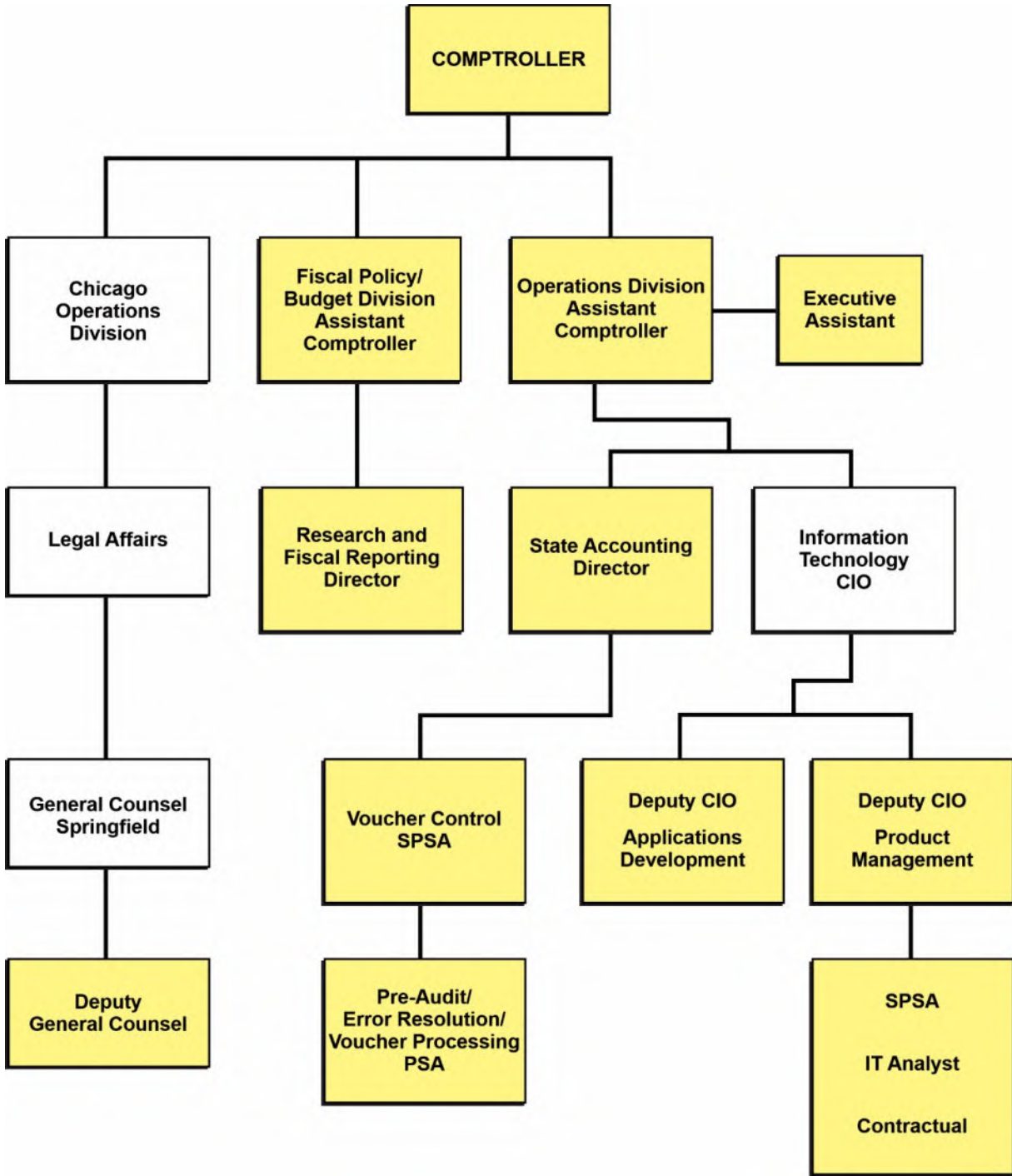
Both the IOC and CMS utilize **multiple functional areas** to operate the Program although multiple areas do not translate into multiple staff. A CMS “Hot Topics” briefing memo from February 2019 stated, *“The VPP continues to be highly utilized. We currently have a position dedicated to this program part-time, with additional help from an intern. We coordinate the program with agencies, CMS and the IOC. In some situations, we have processing delays due to workload, approval timeframes and/or IT programming issues.”* Exhibits 4 and 5 present areas (highlighted) in each organization that deal with the Program.

CMS utilizes officials from the legal area **to operate the Program**. This process has **apparently resulted in delays** in the designation of qualified purchasers. In a May 14, 2014 communication, a CMS official notified officials from Vendor Capital Finance about its application process and the delays in approving an opinion letter by the CMS legal staff. The official stated, *“Again, we are trying to move as quickly as possible to finalize the letter, but please note that we have many other competing demands, including a busy legislative session, which limits our ability to have necessary internal conversations and reach consensus concerning aspects of the QP application process.”*

Program Roles

On May 27, 2020, a Comptroller official reported that the IOC role in the Program is, *“**limited** to processing payment requests and then month end reporting requirements.”* [Emphasis added.] However, we must point out that the joint administrative rules of the IOC and CMS, and the State Prompt Payment Act as amended by Public Act 100-1089, **give the IOC the ability to terminate the Program as well as review a qualified purchaser’s performance under the Program.** (74 Ill. Adm. Code 900.125(g)(i); 30 ILCS 540/9(g)(i))

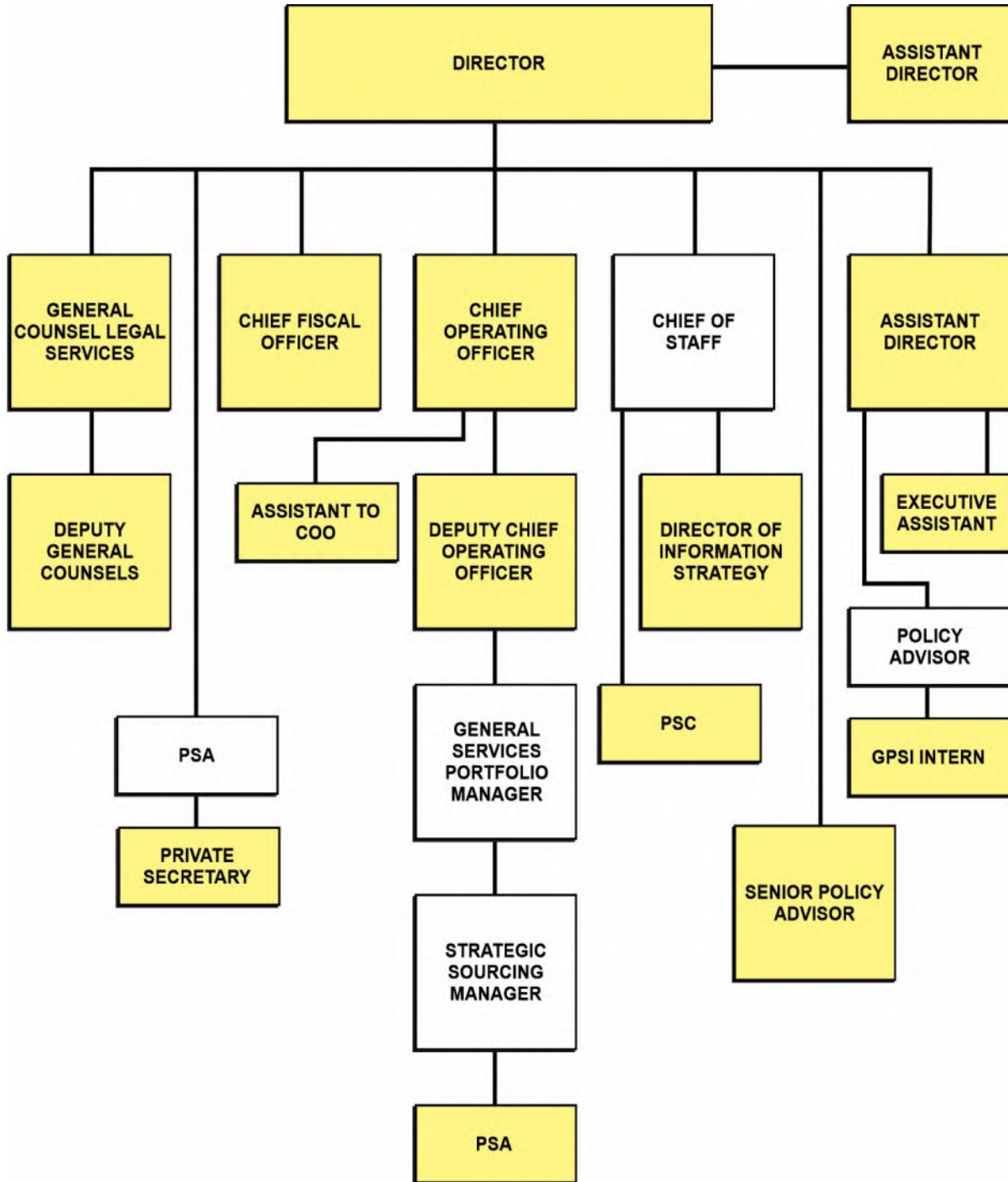
Exhibit 4
ILLINOIS OFFICE OF THE COMPTROLLER ORGANIZATIONAL CHART
 Vendor Payment Program Functional Areas



Note: SPSA – Senior Public Service Administrator; PSA – Public Service Administrator; CIO – Chief Information Officer.

Source: OAG developed from IOC information.

Exhibit 5
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES
 Vendor Payment Program Functional Areas



Note: PSC – Personal Services Contract; PSA – Public Service Administrator; GPSI – Graduate Public Service Intern.

Source: OAG developed from CMS information.

The IOC has continuously referred to CMS as the administrator of the Program, although there was nothing in statute or rule that gave CMS the sole authority to administer the program. In July 2020, we asked the IOC about the Program Terms oversight. In its response, the IOC stressed again that CMS was responsible for oversight.

However, on September 2, 2020, in reference to financial backer disclosure questions asked by auditors, the IOC official told auditors, *“IOC is working with CMS to review the documents. Once approved the documents will be posted.”* Review of the financial backer disclosures **was not part of the IOC reported duties** as conveyed to us on May 27, 2020.

It appears both the IOC and CMS are involved with review and approval of the financial backer disclosures but are not always sure about the status of that review. In February 2021 we asked for copies of the disclosures due July 1, 2020. Both the IOC and CMS provided all but two disclosures. We repeated our request for the two missing disclosures. We were told the following:

- On February 25, 2021, CMS reported, *“Please find attached the financial disclosure forms that were submitted for FY20. These forms are not yet redacted, and are **awaiting IOC legal approval and sign-off.**”* [Emphasis added.]
- On March 2, 2021, the IOC reported, *“Attached are the two remaining items. They are **still being reviewed by CMS.**”* [Emphasis added.]

On February 26, 2021, a CMS official reported, *“These disclosures were in legislation as an IOC initiative and therefore I believe IOC should be the lead agency in reviewing and finalizing them.”*

The IOC has not always taken the same approach to the Program. An email dated May 3, 2011, from an IOC official to the former CMS Director stated, *“VPP still your baby? FYI, its priority changed yesterday from ‘something we were happy to facilitate’ to something [IOC Chief of Staff] wants done.’ This gives me a lot more leeway to help you guys out. Let me know if there is anything I can do.”*

The current officials at the IOC appear to be looking to reduce the IOC’s participation in the Program. On February 17, 2021, Senate Bill 204 was filed. Part of the bill amends the Program where the IOC is removed as a party to establish and implement the Program.

Roles as Outlined in Administrative Rules

Effective July 29, 2011, the Illinois Administrative Code (74 Ill. Adm. Code 900.125) set out the rules utilized for the Program. The authority for the Program is detailed in subsection (a) which states, *“The State Comptroller and the Department [CMS] are authorized to establish and implement the program pursuant to Section 3-3 of the Prompt Payment Act [30 ILCS 540/3-3].”*

A CMS official reported to auditors that the official has *“never seen a document that outlines the responsibilities between the Comptroller and CMS.”* The official added, *“I cannot personally address why not – I can say that I have observed*

since I have been here a lack of cooperation and information between our agencies to administer and address problems.”

On June 8, 2020, an IOC official reported, *“The IOC does not have an implicit oversight role, but rather a reporting role of what information that is jointly submitted to IOC and CMS.”* We would point out that the administrative rules and State Prompt Payment Act as amended by Public Act 100-1089 **do provide** the IOC with an oversight ability. *“Each qualified purchaser’s performance and implementation of its obligations...shall be subject to review by the Department and the State Comptroller at any time to confirm that the qualified purchaser is undertaking such obligations in a manner consistent with the terms and conditions of the program.”* (74 Ill. Adm. Code 900.125(g); 30 ILCS 540/8(g))

None of the four qualified purchasers that participated in this audit were aware of the IOC ever conducting a performance review of the qualified purchaser.

CMS and the IOC have one intergovernmental agreement, dated November 20, 2013, pursuant to the Program. However, this agreement, as confirmed by the IOC, is related to technical requirements for the assignment of vendor payments from funds administered by CMS, not what the responsibilities are of the IOC and CMS.

Failure to document the responsibilities of each agency in the administration of the Program increases the possibility that some oversight is lost or that duplication of efforts by CMS and the IOC cost the State additional funds.

Program Administrative Responsibilities

RECOMMENDATION NUMBER

1

CMS and the IOC should determine which activities each agency has responsibility for under the Vendor Payment Program and memorialize those responsibilities in an Intergovernmental Agreement.

CMS Response:

CMS agrees with the recommendation. CMS will work with the IOC to develop an Intergovernmental Agreement that outlines the activities each agency is responsible for under the VPP.

IOC Response:

This finding fails to recognize that all administrative duties related to the operation of the Program do and always have rested with CMS. The IOC partially agrees with the recommendation and agrees to seek to clarify the IOC’s role via an Intergovernmental Agreement (IGA) with CMS. The IOC disagrees with the Auditor General’s interpretation of the Act and cause statements that are used to demonstrate a cause and a need for a finding and recommendation.

The Act assigns CMS the sole authority to perform the acts related to the administration of the Program, specifically:

- the review and approval/disapproval of all applicants seeking qualified purchaser (QP) designation (30 ILCS 540/8(f));
- the specification of the format of QP monthly reports (30 ILCS 540/[8](f)(9)); and

- the review and approval of sub-participants (30 ILCS 540/8(h)).

Information and registration materials for the Program are housed on the CMS website. (<https://www2.illinois.gov/cms/About/ VendorPayment/Pages/VPPEligibility.aspx>) Aside from the receipt and publication of monthly QP reports and the receipt and publication of financial backer disclosures (which are concurrently performed with CMS), the only substantive roles the Comptroller has in statute and in the Program Terms require consultation with CMS. Those roles – possession of the authority to terminate a QP from the program and the authority to terminate the program altogether – are entirely discretionary. Furthermore, the Program Terms (housed on CMS' website and last updated in 2012) do not provide for any unilateral administrative responsibility to be given to the IOC. A 2011 email from [former IOC official] to [former CMS official], quoted in the abstract by the Auditor General without context, does not demonstrate that the IOC participated in the administration of the Program, as is being suggested by the Office of the Auditor General (OAG). Rather, it is simply a relayed statement that the chief of staff from three Comptroller administrations ago wanted the program to get *implemented*. The IOC initiated legislation in 2020, which was held due to the restrictions placed on session because of COVID-19, and again in 2021 in Senate Bill 581, seeking to clarify it is declarative under existing roles that CMS – not the IOC – is authorized to establish and implement the Program. The IOC will retain current authority to assist CMS if conditions warrant a QP's termination from the Program and current responsibility to post monthly QP reports and financial backer disclosures in conjunction with CMS.

Auditor Comment #1:

We disagree with IOC's conclusion that we failed to recognize that all administrative duties related to the operation of the Program do and have always rested with CMS.

In fact, IOC appears to have oversimplified and slighted its responsibility to the administrative aspects of the Program. IOC does make mention that the statute and Program Terms include IOC in several administrative functions in consultation with CMS including: performance reviews, the ability to terminate both qualified purchasers and/or sub-participants, and the ability to terminate the Program.

Regardless of whether or not these decisions are joint decisions with the CMS, IOC would need to actively be involved with the above administrative duties to be able to jointly assist CMS in any related decisions regarding qualified purchasers, sub-participants or overall Program termination as specified in the joint administrative rules and the State Prompt Payment Act as amended by Public Act 100-1089.

Qualified Purchaser Application Period

CMS **failed to document** the application periods for those entities seeking to become qualified purchasers in the Vendor Payment Program (Program). The failure led CMS to inform an Illinois-based minority-owned firm that attempted to become a potential qualified purchaser that the application period was closed. However, CMS subsequently approved four other qualified purchasers over the next three months immediately following this communication.

During the audit period of FY19 and FY20, there were **five qualified purchasers** in the Program. Exhibit 6 provides a listing of the eight entities that have been designated as a qualified purchaser since Program inception in 2011.

Exhibit 6
QUALIFIED PURCHASERS IN VENDOR PAYMENT PROGRAM
 2012-2020

PURCHASER	APPROVAL DATE	END DATE
Vendor Assistance Program	12/18/12 ⁽¹⁾	Current
Capital Access Program Trust	08/07/13	⁽²⁾ / ⁽³⁾
Muni Pay Me	02/24/14	⁽²⁾
Payplant	03/28/14	Current
Capital Restoration Fund of IL	05/12/14	⁽²⁾
Vendor Capital Finance	05/20/14	Current
Illinois Financing Partners	06/29/16	Current
Vendor Premium Payment Assistance, LLC	06/01/18	Current

Notes:

- ⁽¹⁾ Qualified purchaser stated it first purchased receivables in 2011.
- ⁽²⁾ CMS could not find evidence of final date in the Program.
- ⁽³⁾ CMS reported qualified purchaser was approved yet never had an assigned receivable.

Source: OAG developed from Program information.

Since July 2011, the Illinois Administrative Code (Code) (74 Ill. Adm. Code 900.125(c)) has detailed that an **applicant** was defined as an entity seeking to be designated as a qualified purchaser. Additionally, the Code defines an **application period** as the time period when the Program is accepting applications **as determined by CMS**. Identical language was codified into the State Prompt Payment Act pursuant to Public Act 100-1089.

A qualified purchaser is any entity that, **during any application period**, is approved by CMS to participate in the Program on the basis of certain qualifying criteria as determined by CMS. Absent an application period, we are unsure how CMS could select any entity to be a qualified purchaser.

On May 21, 2020, we asked CMS for a listing of application periods as well as how CMS determined when an application period for the Program was necessary. Ninety-eight days later, on August 27, 2020, a CMS official responded, “*Still*

researching” and added that “no application periods have been conducted recently.”

While CMS could provide no documentation on application periods, it informed entities seeking to become qualified purchasers that it was not accepting applications:

- A Peoria-based entity sought to become a qualified purchaser in February 2014. The entity had just become **certified as a Minority-Owned Business Enterprise under the Business Enterprise Program**. In a February 19, 2014 email, an official for the entity informed a CMS official that it wanted to apply to qualify as a qualified purchaser and that banks had offered to establish a large line of credit for this purpose. The CMS official, after discussing with the CMS Chief Operating Officer replied, “As I suspected, the application period for bringing in new *Qualified Purchasers (QP)* is closed at this time.” **CMS approved four qualified purchasers after this email date, from February 24, 2014, through May 20, 2014.**
- On March 9, 2015, a CMS official informed an official from a prospective qualified purchaser that “Also, the Vendor Payment Program (VPP) is closed to bringing in more *Qualified Purchasers (QP)*. We have six at the present time. This program closed to any new *QPs* over a year ago. There are no plans at the present time of re-opening for new *QPs*.” **Approximately a year later, in June 2016, CMS approved Illinois Financing Partners as a qualified purchaser in the Program.**

A CMS official reported on October 26, 2020, “In talking with our legal area and researching myself, I have not discovered an application period or schedule. Possibly we will discover some of this in our e-mail search, but for now my knowledge is that there was never a ‘formal’ application period.”

Failure to define and document application periods can lead to confusion on the part of entities looking to become qualified purchasers. Informing entities seeking to become qualified purchasers that application periods were closed, and then subsequently approving other entities as qualified purchasers, **creates the appearance that qualified purchasers are awarded in an arbitrary and unfair manner.**

Qualified Purchaser Application Period	
RECOMMENDATION NUMBER 2	<i>CMS should comply with State rules and define an application period when it seeks to add qualified purchasers to the Vendor Payment Program.</i>
CMS Response: CMS agrees with the recommendation. CMS does not intend to pursue additional Qualified Purchasers at this time. If CMS does pursue this in the future, an application period will be established when seeking to add qualified purchasers to the Vendor Payment Program.	

Lack of Documentation to Support Qualified Purchaser Decisions

The selection of qualified purchasers for the Vendor Payment Program (Program) is an important decision that should be **guided by sound criteria**. While CMS identified criteria for selection, that **criteria was not consistently followed**. In addition, **CMS could not tell us** who specifically made the decisions to approve entities seeking to become qualified purchasers and **CMS had not maintained documentation** to support how qualified purchasers for the Program were selected. Furthermore, from what documentation is available, it appears CMS allowed and facilitated the purchase of receivables by a qualified purchaser that did not have all formalized documentation submitted for selection to the Program.

CMS provided us with the file documentation it possessed on the entities that were selected to be qualified purchasers. Additionally, CMS provided one file for which it had documentation on an entity that was not approved to be a qualified purchaser (Fair Market Illinois). However, **CMS reported that the files do not appear to detail the decision-making process**.

We summarized CMS' compliance with gathering required documentation and conducting all activities for the approvals of qualified purchasers and found there to be inconsistent documentation maintained in the various applicant files. We asked CMS why there was inconsistent documentation in the files. CMS replied, ***“CMS cannot address your questions for the reason or cause that documentation was not maintained.”*** [Emphasis added.]

Checklist

CMS developed a Checklist for Interested Qualified Purchasers for the Program (see Appendix D). The checklist, which is annotated back to the Program Terms, is divided into five sections:

- General Requirements
- General Qualified Purchaser Designation Requirements
- General Sub-Participant Certification Requirements
- Financial Requirements
- System Requirements

However, CMS did not appear to independently verify the information on the checklist. A CMS official reported to auditors that the official believed the information on the checklists were *“self-reported – my understanding is that review and approval was conducted by CMS Legal.”* Our examination of information submitted by CMS showed that only one qualified purchaser, Illinois Financing Partners, had a completed checklist in the file, and it appeared **the qualified purchaser completed the checklist**. We asked CMS why these checklists were not utilized and why the applicant completed it for the only checklist CMS could provide. The CMS official replied, *“Unfortunately I cannot respond to these questions; I do not have knowledge of these historical approval issues.”*

CMS Additional Criteria

CMS also utilized documents that **were not detailed** in any guidance for the selection of qualified purchasers. In a December 2, 2016 email, a CMS official from the Legal Department informed the CMS Associate Director that there were no welcome packets for entities wanting designation as a qualified purchaser. The official added, *“[I]n addition to what is listed on the checklist, we have required an attorney opinion letter prior to accepting a new QP into the program. We also require entities that are going to operate as QPs or SPs to obtain a certificate of good standing to do business in Illinois from the SOS [Secretary of State].”* [Emphasis added.] Our examination of the applicant files found:

- The files lacked SOS information to transact business in the State not only at the beginning of the qualified purchasers’ run in the Program but also yearly renewals.
- The opinion letters were **completed by attorneys for the entities seeking to become qualified purchasers** and there was no documentation that showed CMS verified the information.

A CMS official thought the opinion letter should have been added to the Checklist for Interested Qualified Purchasers back in July 2013. However, it never made it into the checklist.

Approving Qualified Purchaser Prior to Finalized Documentation

On June 29, 2016, a former CMS Director sent an approval letter to Illinois Financing Partners to confirm Illinois Financing Partners (IFP), LLC, IFP Funding, LLC, and IFP Funding Trust to participate in the Vendor Payment Program and Vendor Support Initiative.

The 2nd paragraph of that letter stated, *“This approval is conditioned upon IFP’s implementation of a fully operational and CMS-approved IT [Information Technology] platform in conformance with the requirements of the Program Terms and as referenced in the checklist submitted to CMS by IFP on June 21, 2016, within six (6) months of this letter.”* We had not seen language like this in other approvals so we asked CMS why the qualified purchaser was allowed to start without formalized documentation. CMS replied on March 9, 2021, that *“CMS does not have documentation and cannot address these issues below.”*

The 3rd paragraph of the June 29th letter stated, *“Finally, this approval is provided in reliance upon, inter alia, various representations made by or on behalf of the Entities, including, without limitation, the representations contained in the Qualified Purchaser Designations submitted by each Entity, the letter provided by Bank of America on behalf of the Entities, the opinion provided to CMS by Chapman and Cutler on behalf of the Entities (a signed version of which will be sent to CMS immediately upon the Entities’ receipt of this letter), the draft ‘IFP Funding Trust Amended and Restated Trust Agreement’ (a final and fully executed version of which will be sent to CMS immediately upon the Entities’ receipt of this letter) as well as other documents submitted by the*

Entities in connection with their application to become Qualified Purchasers." [Emphasis added.] We notified CMS that the file provided by CMS, in June 2020 – four years after the approval, **did not contain** an opinion letter, neither draft nor final. Additionally, the file provided by CMS **did contain the draft funding agreement noted** in the approval letter. Four years later, the file still **did not contain** the final fully executed agreement. CMS replied on March 9, 2021, that *"CMS does not have documentation and cannot address these issues below."*

During our review of a query of emails, we came upon an email from the former CMS Director to an official from IFP. The email was dated June 29, 2016, at 5:41 pm. The email states, *"It was good to talk to [IFP officials] this afternoon. I have attached your approval to become a Qualified Purchaser for the Vendor Support Initiative and Vendor Payment Program. We truly appreciate your participation in the program, [sic] however, I have to respectfully decline to be quoted in your press release. My team has indicated that we will be prepared to work with you to complete the Health Alliance transaction tomorrow. I know that I promised to get that done tonight, but hope that tomorrow morning will be suitable. I have asked my team to make it their top priority tomorrow morning."* [Emphasis added.] We asked CMS whether the new qualified purchaser made receivable purchases the day after being approved and without all documentation being provided for selection and whether other qualified purchasers were able to make purchases without all required documentation submitted. CMS replied on March 9, 2021, that *"CMS does not have documentation and cannot address these issues below."* While CMS made this assertion to auditors during the audit, an email between CMS officials on June 29, 2016, stated *"As soon as I have the signed letter from you I'll send it to [IFP officials] and their attorneys and they will be admitted as a QP and in a position to complete the Health Alliance transaction (HA is assigning 4 invoices to IFP) tomorrow."*

Evaluating Potential Qualified Purchasers

During the audit we examined the results of a query into emails for certain CMS officials. From that review we found **34 instances** where there were emails from entities about the designation of qualified purchaser. These 34 entities are summarized in Exhibit 7. **CMS did not have documentation to support how it evaluated these entities.**

Exhibit 7
ENTITIES INTERESTED IN BECOMING QUALIFIED PURCHASERS

Entity	Time Frame	Entity	Time Frame
Occom Opportunity Partners	October 2017	NatLUST	May 2013
ASA, LLC	October 2017	UBS	May 2013
Centerbridge Partners, LP	September 2016	Capital Restoration Fund	May 2013
TradeGate Financial	July 2015	Societe General	May 2013
Piper Jaffray	March 2015	KBL	May 2013
Bizfinanz, LLC	February 2014	Williams Capital	May 2013
StoneCastle Partners, LLC	December 2013	Prudential Capital	May 2013
Illinois Financing Partners	December 2013	Castlewall Capital	May 2013
Coral Capital	October 2013	Drum Capital Management	February 2013
Brevet	May 2013	Mayer Brown	January 2013
JP Morgan	May 2013	Angeon Group	November 2012
Lone Eagle Capital	May 2013	Vega Group	November 2012
Advanced Placement Capital	May 2013	Storm Harbour Partners	November 2012
Wells Fargo	May 2013	Capital Relief Fund of IL	November 2012
Duetsche Bank	April 2011	DRW Trading	March 2012
CITI	May 2013	Headwind Capital, LLC	March 2012
ASA Partners	May 2013	Trivergance	May 2011

Source: OAG developed from CMS documentation.

One of the entities listed in the Exhibit, Occom Opportunity Partners, pushed CMS for a decision on its status to become a qualified purchaser **for over a year without CMS making a decision on its application** to become a qualified purchaser. Email communications showed:

- On October 2, 2017, an Occom official asked a CMS official if CMS was looking for more qualified purchasers and how long it would take to become approved.
- The CMS official responded the same day, *“We are ok. I honestly don’t know. I would go through it then about 3 other people would as well.”*
- The Occom official, on October 16, 2017, reported it could have a robust website set up in 7 to 10 days. The official stated, *“Hopefully we can get this done by the end of the week.”*
- The CMS official told other CMS staff the same day, *“I have spoken with this gentleman a great deal. As I think his e-mail indicates, he is extremely motivated to become a qualified purchaser.”*
- Nearly a year later, on August 13, 2018, the Occom official contacted another CMS official and stated, *“It was nice to speak to you on the phone today and I am glad we have finally found the right person to discuss our Qualified*

Purchaser application.” Occom also reported it was currently a sub-participant in the Program.

- Nine days later, on August 22, 2018, the CMS official replied, “*Circling back on this matter....searched our internal files...This document would be insufficient for qualification.*” [Emphasis added.]
- By the time CMS reported the Occom documentation was insufficient on August 22, 2018, Occom had submitted financial backer disclosure information as a sub-participant on August 18, 2018 – information that CMS accepted and approved.

A March 5, 2019 email from the CMS Director asked how CMS determined whether a qualified purchaser is eligible to participate in the Program. A CMS official replied, “*The original QP was VAP approved in 2011/2012 the latest was VPPA that was finalized in May 2018. We have 5 others that have been active over the course of the program; 2 that are no longer active....They were randomly approved...to my knowledge there wasn’t an official application period, even though that is how the statute reads.*” [Emphasis added.]

The State Prompt Payment Act (Act) (30 ILCS 540/8(f)) states that CMS “*shall review and approve or disapprove each applicant seeking a qualified purchaser designation.*” The Act lays out eleven factors to be considered by CMS when considering entities for the qualified purchaser designation. These factors mirror the factors in administrative rule dating back to July 2011.

A CMS official reported to auditors that “*As far as the specific decision making and approvals, such as why one QP/firm was approved over another, I have not seen anything that ranks or otherwise defines ratings comparing them to each other.*” In a June 29, 2020 email, another CMS official stated, “*[Officials] did a search of our legal files and I sent you everything we were able to locate. However, it is quite possible that these decisions did not produce stand-alone documents and instead were primarily handled through email.*” **Auditors reviewed almost 177,000 emails, including those of seven attorneys, and did not discover any emails that documented why an entity was selected or not selected as a qualified purchaser.**

Not only did CMS not have documentation to show how winning qualified purchasers were selected, apparently it **did not notify entities that were not selected.** On May 6, 2013, an official from former Governor Quinn’s Office asked CMS officials, “*Do we have a list of other companies who inquired but weren’t able to meet the requirements? Did a formal notification of any type go out to help ensure that all personally interested parties were aware?*” A former CMS Chief Operating Officer replied, “*No formal document was sent out. It has been more of a series of ongoing discussions with all interested parties. Potential QP’s [sic] interest fluctuates as they have become more familiar with the program terms and associated risk. We have not officially rejected any potential QPs.*” [Emphasis added.]

Failure to document how qualified purchasers are selected for the Program makes the process appear to be arbitrary. Additionally, when entities express interest in becoming qualified purchasers and CMS has no documentation to support those decisions, it is non-compliant with the State statute.

Lack of Documentation to Support Qualified Purchaser Decisions

**RECOMMENDATION
NUMBER
3**

CMS should perform the review necessary and document the selection process, including testing of applicant information technology capabilities, for qualified purchasers in the Vendor Payment Program.

CMS Response:

CMS agrees with the recommendation. CMS does not intend to pursue additional Qualified Purchasers at this time. If CMS does pursue this in the future, a documented selection process will be developed for future applicants of the Vendor Payment Program.

Deferred Payment Reserve Accounts

CMS and the IOC have not enforced Program Terms relative to Deferred Payment Reserve Accounts for the Vendor Payment Program (Program).

The Program has a set of Program Terms that participating State vendors and qualified purchasers have to follow. These Program Terms are dated December 13, 2012. Additionally, the Program Terms set out how CMS and the IOC must monitor the Program.

The Program Terms define a Deferred Payment Reserve Account (Account) to mean a dedicated account to be maintained by a qualified purchaser solely for the purpose of securing (i) the qualified purchaser's obligation to pay the deferred payment to a participating vendor and (ii) the qualified purchaser's right to recover all or a portion of any State offsets. The Account:

- will be maintained as a non-interest-bearing account;
- will be maintained and tracked by the qualified purchaser with an ongoing accounting of the funds; and
- will have a **copy of accounting promptly furnished to CMS and the IOC on a monthly basis, no later than 30 days after the end of each month** and otherwise upon request of CMS and/or the IOC from time to time.

Qualified purchasers, under the Program Terms, have the opportunity **to not maintain an Account** if:

- the qualified purchaser does not have any sub-participants;
- the qualified purchaser establishes a bankruptcy remote trust, the terms of which are acceptable to CMS in its sole discretion; and
- CMS determines to its satisfaction that such qualified purchaser can at all times track, account for and identify the deferred payments and the outstanding balances.

On February 23, 2021, **CMS reported that all five qualified purchasers that operated in the Program during FY19-FY20 had sub-participants.** CMS also indicated that it had **no documentation** to show that qualified purchasers had established bankruptcy trusts. Finally, CMS stated it had no documentation to show that qualified purchasers can at all times track, account for and identify the deferred payments and the outstanding balances. In that same correspondence, CMS reported that **no documentation existed** to show that qualified purchasers had demonstrated to CMS that they could accurately estimate penalty amounts, a requirement under Section III (7) (b) of the Program Terms.

The CMS information **contradicts** what two qualified purchasers reported to auditors in August 2020. Vendor Assistance Program reported it *“was not required to maintain a Deferred Payment Reserve Account by virtue of having demonstrated to CMS personnel that it has met the requirements of VPP Section III.6 and III.7 [of the Program Terms].”* Illinois Financing Partners also stated it

was exempt under Section III.6. The other two qualified purchasers that participated in the audit said **no one from the IOC or CMS had ever audited/questioned the reserve account.**

A CMS official reported to auditors that *“CMS has not done anything with Deferred Payment Reserve Accounts since I have begun working with VPP, and to my understanding has never done it since the inception of the program. When informed of this, I had asked our legal department for documentation to show that we ‘waived’ this requirement or otherwise for our audit trail, but no documentation has ever been provided to me....I do not have record of any Deferred Payment Reserve Account reports that have ever been received by CMS.”*

The IOC, on August 3, 2020, reported that the IOC does not receive any reports on the Accounts.

A CMS official reported to auditors that *“Overall Policies and Procedures were not developed for the VPP previously, as noted. We are currently reviewing the Terms and drafting Policies and Procedures that will reconcile more closely with future management of the Program.”* We would note that the Program has been under the direction of these Program Terms for **over eight years.**

The same official reported, *“CMS does not have a system in place to monitor all payments. Previous administrations did not feel it was prudent to spend taxpayer dollars monitoring the accounts receivable assets of vendors.”* The Vendor Payment Program is a State of Illinois program and CMS and the IOC have the duty to monitor the Program.

An IOC official reported, *“The IOC is not involved with oversight of the QPs. CMS deals directly with overseeing the QPs.”* As detailed in Recommendation Number 1 of this report, State statute and administrative rule authorize the IOC to be part of the Program even though the **direction does not detail specific responsibilities for the IOC.**

Failure to require qualified purchasers to maintain and provide accounting of the Deferred Payment Reserve Account is a violation of Program Terms and can **increase the likelihood** that a participating State vendor may not be paid for the receivable assigned to the qualified purchaser. Additionally, failure of CMS and the IOC to enforce this requirement is an abdication of their oversight responsibility.

Deferred Payment Reserve Accounts

RECOMMENDATION NUMBER

4

CMS and the IOC should enforce the requirement of the maintenance and review of Deferred Payment Reserve Accounts under the Vendor Payment Program. Additionally, the IOC and CMS should make a definite determination as to whether the existing qualified purchasers are exempt from maintaining a Deferred Payment Reserve Account.

CMS Response:

CMS agrees with the recommendation. CMS is currently reviewing the Program Terms and preparing updates to reflect recommendations for further discussion with the IOC, Qualified Purchasers, and vendors.

IOC Response:

The IOC disagrees with this recommendation. This finding also fails to recognize that all administrative duties related to the operation of the Program do and always have rested with CMS. The IOC will agree to seek to clarify the IOC's role via an IGA with CMS. The IOC disagrees with the Auditor General's interpretation of the Act assigning administrative duties to the IOC. The Act assigns CMS the sole authority to perform the acts related to the administration of the Program.

Auditor Comment #2:

We again disagree with the IOC's conclusion that we failed to recognize that all administrative duties related to the operation of the Program do and have always rested with CMS.

Per the Act, a qualified purchaser or sub-participant may be terminated from the Program for a breach or failure to meet any of the terms or conditions of the Program. One of the conditions of the Program is the maintenance of a deferred payment reserve account. It is questionable how the IOC, in consultation with CMS, could jointly decide to terminate a qualified purchaser absent knowing anything about the maintenance of such an account.

Financial Backer Disclosures

CMS and the IOC allow qualified purchasers to submit financial backer disclosures after the fact. Disclosures due July 1, 2020, had yet to be published by CMS by March 31, 2021. The IOC published the disclosures on March 31, 2021. Therefore, the public had **639 days of not knowing who was providing financial backing for qualified purchasers participating in the Vendor Payment Program (Program)**. We found that disclosures were not always filed timely and that CMS and the IOC do not know whether the disclosures are accurate.

Public Act 100-1089 codified the Program into statute and added the disclosure of financial backer information by the qualified purchasers. The Program utilizes a Financial Disclosure Form to collect the information required by the Public Act. While requiring the parties that provide financing to qualified purchasers **increases transparency** of the Program, **neither CMS nor the IOC amended their joint administrative rules to include the financial backer disclosures.**

Timing for Filing Financial Backer Disclosures

The State Prompt Payment Act (Act) (30 ILCS 540/9) requires the submission of financial backer disclosures. The Act states, *“Within 60 days after the effective date of this amendatory Act of the 100th General Assembly, at the time of application, and annually on July 1 of each year, each qualified purchaser shall submit to the Department and the State Comptroller the following information about each person, director, owner, officer, association, financial backer, partnership, other entity, corporation, or trust with an indirect or direct financial interest in each qualified purchaser.”* Exhibit 8 provides the information required.

Exhibit 8

REQUIRED FINANCIAL BACKER DISCLOSURE DOCUMENTATION

Required for each Qualified Purchaser		
Percent ownership	Type of ownership	Names and aliases
Mailing address	Type of business entity	Dates of business formation
Names of controlling shareholders and percent of ownership	Any indirect earnings resulting from the Program	Any earnings associated with the Program to any parties not previously disclosed
Required for each Trust		
Names, addresses, dates of birth, and percentages of interest of all beneficiaries	Any indirect earnings resulting from the Program	Any earnings associated with the Program to any parties not previously disclosed

Source: OAG developed from the State Prompt Payment Act.

CMS and the IOC define the filing deadline of July 1st to be **disclosure after the fact**, meaning the qualified purchasers provide the information not before the period begins but after. We question **how transparent this practice is given that the financial backers are not known until after the reporting period.**

We asked CMS whether it interpreted the disclosure to be due before or after the period. CMS responded, *“We interpret the disclosures to be provided at the end of the period.”*

An IOC official reported, *“CMS and IOC agreed these reports are based on fiscal years, otherwise July 1 seems a rather specific yet strange date. But the law is silent on fiscal or calendar so it’s obviously left to interpretation. Again, fiscal was our collective interpretation, which is why we believe the previous year’s reports are not due until after the fiscal year has concluded and why since last year we have sought legislation extending the July 1 deadline to August 1.”*

The General Assembly appears to have wanted financial backer information disclosed on an ongoing basis, not after the fact given that there was **an immediate effective date** on Public Act 100-1089, August 24, 2018, and the General Assembly required initial disclosures within 60 days of the effective date, by October 23, 2018.

Additionally, the Act (30 ILCS 540/8(h)) also looks for immediate remedy when determining whether a new sub-participant is to be included in the Program. The General Assembly wrote, *“Each applicant and each qualified purchaser has an affirmative obligation to promptly notify the Department of any change or proposed change in the identity of the sub-participants that it disclosed to the Department no later than 3 business days after that change.”* The General Assembly wanted prompt, ongoing notification from qualified purchasers and **not wait until the next July 1st**.

Finally, the Financial Disclosure Form itself requires an immediate remedy when the submitted disclosure is no longer accurate. The Form requires disclosing entities to update the form within 30 business days of any change in the disclosure. This demonstrates that CMS and the IOC feel the change necessitates a quicker reporting than waiting until the next July 1st.

Testing Results

During the audit we conducted audit testing of the qualified purchasers’ compliance with the reporting requirements in the Act. We tested for whether the qualified purchaser: timely submitted the report; submitted the required organizational chart; submitted the required ownership and income distribution information; and submitted the required responses for complete disclosure and use of a lobbyist or agent. Exhibit 9 provides the results of our testing.

Exhibit 9
FINANCIAL BACKER DISCLOSURE TESTING RESULTS

Requirement	Disclosure Due Dates			Overall
	October 23, 2018	July 1, 2019	July 1, 2020 ⁽¹⁾	
Timely Report Submission	83% (19/23)	42% (10/24)	0% (0/19)	44%
Number of Days Late	7 to 87	9 to 156	9 to 14	N/A
Organizational Chart Submission	74% (17/23)	63% (15/24)	53% (10/19)	64%
Ownership/Income Distribution	74% (17/23)	88% (21/24)	84% (16/19)	82%
Lobbyist/Agent Disclosure	91% (21/23)	88% (21/24)	84% (16/19)	88%

Note: ⁽¹⁾ CMS and the IOC allowed a 15 day grace period for submission, a period that was not authorized in the State Prompt Payment Act or administrative rule.

Source: OAG developed.

We also asked CMS and the IOC about how the disclosures are evaluated.

- A CMS official told auditors, *“We do not know if the disclosures are complete and accurate. CMS reviews them for completeness and following directions, but does not possess the information to validate it is complete and accurate.”*
- An IOC official told auditors, *“The IOC does not have an investigative role under this program that is administered by CMS.”* The official, in responding to our question as to whether the IOC researches the companies reported on the disclosures, added, *“There is nothing within 30 ILCS 540/9 requiring the IOC, or any other entity for that matter, to research these companies, nor any other entity listed in the financial backer statements as receiving earnings from the VPP or having a financial interest in the QP. The IOC does not have an implicit oversight role, but rather a reporting role of what information is jointly submitted to IOC and CMS.”*

The IOC and CMS should take the oversight role of the entities that may or may not be financially backing qualified purchasers in the Program more seriously. During the audit we came across an email from September 11, 2015, from a CMS attorney to the CMS Director at the time. In the email the attorney stated, *“[A lawyer] (lawyer in the Gov's office) invited [CMS attorneys] to come upstairs for a 1:30 pm call with the Gov. He wants to talk about whether he can get some of his finance contacts to take a greater interest in extending credit to State vendors to help keep the government operational. I will let you know what we learn, and how this may impact or intersect with the VPP.”* CMS and the IOC did not have knowledge of whether the former Governor or his contacts were part of the Program.

Disclosure Examination Delays

Even though CMS and the IOC indicated that they cannot determine whether disclosures are accurate and that they simply are responsible for publishing the disclosure information, it **takes them a significant amount of time to go**

through and publish the disclosures. Utilizing various forms of correspondence, we found:

- June 20, 2019: Vendor Assistance Program, LLC (VAP) submits annual disclosures to CMS and the IOC.
- July 25, 2019 (**35 days after original submission**): CMS and IOC provide comments to VAP after initial review.
- July 26, 2019: VAP revises disclosures and submits to CMS and the IOC.
- October 31, 2019: The IOC asks CMS where it is in the latest review.
- November 19, 2019 (**116 days after updated submission**): CMS and the IOC notify VAP of one item on disclosures to update.
- November 20, 2019: VAP submits revised disclosure to CMS and the IOC.
- November 25, 2019 (**5 days after revised submission**): IOC informs CMS that VAP included dates of birth on the incorrect disclosure.
- December 3, 2019 (**8 days later**): CMS informs the IOC, *“VAP is an LLC, not a trust – so they don’t have to submit the birthdates for VAP as the company.”*
- December 3, 2019: An IOC official responded, *“Then that’s my miss and I will consider VAP done with the June submission.”*

While the qualified purchaser, in this example VAP, was timely in submitting and responding to the State’s requests, **CMS and the IOC were not timely** in the review and publishing of the disclosures.

July 1, 2020 Disclosures

While CMS normally sends the financial backer disclosure forms to the qualified purchasers two to three weeks ahead of the deadline, CMS sent the forms due July 1, 2020, on June 30, 2020, at 1:45 p.m. – the day prior. A CMS official stated, *“CMS and IOC agreed to allow a grace period for the submission so that data through June 30th could be included, and that is why the email was sent out later than it typically is.”* We noted to CMS that neither the State Prompt Payment Act nor the administrative rules allow for any grace period.

On March 31, 2021, the IOC posted to its website the financial backer disclosures that were due on July 1, 2020 – a period of 273 days. CMS had not published the disclosures. Since CMS and the IOC believe the disclosures are not due until after the period, the disclosures due July 1, 2020 would be for the financial backers on July 1, 2019. Therefore, the public had 639 days of not knowing who the financial backers were for the Program.

It appears both the IOC and CMS are involved with review and approval of the financial backer disclosures, but are not always sure about the status of that review. In February 2021 we asked for copies of the disclosures due July 1, 2020. Both the IOC and CMS provided all but two disclosures. Eventually they did provide the disclosures. We were told the following:

- On February 25, 2021, CMS reported, *“Please find the attached financial disclosure forms that were submitted for FY20. These forms are not yet*

redacted, and are awaiting IOC legal approval and sign-off.” [Emphasis added.]

- On March 2, 2021, the IOC reported, “*Attached are the two remaining items. They are still being reviewed by CMS.*” [Emphasis added.]

Untimely submission of financial backer disclosures for the Program decreases transparency in the Program and leaves the public and members of the General Assembly not knowing who is involved with this State-run program.

Financial Backer Disclosures

**RECOMMENDATION
NUMBER
5**

CMS and the IOC should clarify when the General Assembly expects financial backer disclosures to be filed for the Vendor Payment Program. Additionally, CMS and the IOC should consider revising the joint administrative rules to codify financial backer disclosures, including when those disclosures need to be filed. Finally, CMS and the IOC should ensure that all qualified purchasers are submitting all required information on the financial backer disclosures, and in a timely manner.

CMS Response:

CMS agrees with the recommendation. The IOC proposed an amendment to adjust the submission date, allowing 30 additional days for data to be provided for the previous fiscal year. CMS will work with the IOC to improve procedures for the submission, review, and approval of financial backer disclosures.

IOC Response:

The IOC agrees with the Auditor General on clarifying the timing of financial backer disclosure information. The IOC agrees to work collaboratively with CMS to publish the reports timely.

The financial backer disclosures are an IOC creation borne out of a concern over lack of transparency in the Program at the height of Governor Rauner’s budget impasse. There were no financial backer disclosures prior to this IOC initiative. The disclosure requirements are codified in P.A. 100-1089. The Joint Committee on Administrative Rules does not favor rulemakings that simply restate statutory language, so the IOC disagrees that a standalone rulemaking for the disclosures is necessary.

Recognizing the impracticality of expecting QPs to file complete and timely disclosures the day after the end of a fiscal year (July 1), the IOC passed legislation in the spring 2021 session to move the due date to August 1. That change further clarifies both agencies’ interpretation that the required reporting to CMS and the IOC is for information relative to a complete fiscal year. The issues raised by the OAG regarding the timing of the disclosures demonstrate a misunderstanding of how disclosures work. Like all other disclosures seeking disclosure of ownership interests, the financial backer disclosures, as they relate to the disclosure of ownership interests, are a “snapshot in time” reflection of the ownership of a company on the date they are signed. The OAG’s notion of “disclosure after the fact” does not make logical sense. There is no way for a QP to disclose what the ownership of its business will be on January 1, 2021 on a disclosure submitted on July 1, 2020. Furthermore, the disclosures also require QPs to disclose information related to earnings, and disclosing earnings that have yet to be earned is obviously also a literal impossibility. As the OAG finding notes, there is already a continuing obligation on the QPs to submit updated disclosures in the event of a change in ownership interest. Therefore, the statement made by the Auditor General in the Topic Sentence that “the public has had **639 days of not knowing who the financial backers were for the Program**” is an entirely inaccurate exaggeration.

Auditor Comment #3:

In its response, the IOC takes credit for the financial backer disclosures citing an apparent lack of transparency prior to this IOC initiative, an IOC initiative that originally only required the disclosures to be submitted to CMS. We would think that if the intent is to provide transparency with regard to who is in Program, this information regarding Program participation should be provided at that time. Providing such information after the fact is neither helpful nor transparent, as sub-participants may no longer be in the Program.

As the IOC points out, disclosure of interests are a “snapshot in time”. In the finding, we did not project future ownership interests. Since the disclosures, specific to ownership, are a “snapshot in time”, there should be no reason why the ownership information is not attested at the time the backer disclosures are submitted at July 1 annually. As the IOC notes, it is a continuing obligation of the qualified purchasers to submit updated disclosures in the event of a change in ownership interest. Therefore, the IOC’s accusation of our misunderstanding of ownership is not valid.

Misdirected Payments

While the IOC allows State vendors to receive payments electronically, qualified purchasers under the Vendor Payment Program (Program) **do not have the same opportunity**. Qualified purchasers reported **over \$7.2 million in payments** made under the Program were mailed to a party other than the qualified purchaser. We found payments mailed to: an incorrect qualified purchaser; an incorrect sub-participant; and the vendor as opposed to the qualified purchaser.

At the outset of the audit, the IOC reported, *“Our operational goals are to process transactions in a timely and efficient manner.”*

The IOC, as noted on the IOC website, offers vendors who provide goods and services to the State of Illinois a more efficient and secure method of receiving their payments through an Electronic Funds Transfer (EFT) Direct Deposit system. Direct deposit payments **bypass the printing and mailing procedures** and are transmitted electronically to the vendor’s financial institution for posting to its accounts. Generally, payments made via direct deposit take two banking days to be debited to the account specified.

While State vendors can receive their payments via direct deposit from the IOC, qualified purchasers cannot. Payments of the base invoice amount and the prompt pay penalties are remitted by the IOC to the qualified purchasers via hard copy warrants.

State warrants issued under the Program are made out to the participating State vendor on the first line of the warrant and with a “C/O” (care of the qualified purchaser) on the second line of the warrant.

Information posted on the IOC website describes that *“Effective June 1, 2014, state vendors that receive at least 75 paper checks in a fiscal year from the same agency will be assessed the \$2.50 processing fee for each subsequent paper check.”* An IOC official reported to us that qualified purchasers in the Program *“are not exempted so they should be charged the fee after receiving 30 payments from the same agency/fiscal year.”*

We examined CMS’s assignment approval documentation for receivables purchased by qualified purchasers. These documents state, *“CMS will take all necessary steps to ensure that full payment of the Invoices (including, without limitation, payment of the underlying invoice and payment of interest payable pursuant to the Prompt Payment Act) will be made to [the qualified purchaser] and sent to the address below.”*

Misdirected payments occur when payments are sent to the wrong party. We asked the IOC, on October 29, 2020, if it thought the misdirection of State payments to the incorrect party was a problem for the Program. The IOC replied, *“Not really. The volume appears to be low and the parties of the contract are responsible to address any potential receivable processing issue.”*

We later met with IOC officials on November 19, 2020, and informed them that during the audit, we asked the four qualified purchasers that agreed to participate

in the audit about misdirected payments. **Qualified purchasers provided the following information:**

- Illinois Financing Partners (IFP) reported nine **base invoice checks**, totaling \$452,302, had incorrectly been sent to the vendor as opposed to IFP.
- IFP reported that all 358 of the non-group health insurance **penalty payments**, totaling **\$841,372, incorrectly went to the vendor as opposed to IFP**. While IFP was able to recover most of the payments, four warrants were permanently “missing.” IFP also reported on October 27, 2020, *“We’re still awaiting over \$100,000.00 of remaining PPP [Prompt Payment Penalty] as part of this program and at this point just assume it will be misdirected despite our documented efforts and persistent communications with CMS and IOC to address the problem.”*
- Vendor Assistance Program (VAP) provided auditors a spreadsheet showing 6,352 penalty payments, totaling **\$5,941,277, incorrectly went to the vendor as opposed to VAP**.
- Payplant and Vendor Capital Finance also reported issues with misdirected payments.

An IOC official told us she was unaware of the issues above. However, the issue of misdirected payments has unfortunately been a recurring problem with the Program. During the audit, we reviewed CMS email queries and found a number of instances where the issue of misdirected payments was mentioned. Exhibit 10 summarizes those communications. The Exhibit shows that the communications were addressed to CMS even though the IOC is the entity that erroneously sent the State payments.

Exhibit 10
INSTANCES OF MISDIRECTED PAYMENTS IN THE VENDOR PAYMENT PROGRAM

Date	Amount	Circumstances	Reported to
07/17/19	\$425,858.72	VAP notified Universal Protection payment for VAP misdirected to the vendor. Thirteen days without resolution.	CMS
03/27/18	\$13,217,065.28	VCF notified CMS that 19 Wexford receivable checks were sent to the wrong sub-participant.	CMS
12/06/17	\$29,000,000.00	VCF notified CMS that 49 checks were sent to the wrong VCF sub-participant.	CMS
01/17/17	Unknown	VCF notified DoIT and CMS it received 9 checks intended for VAP.	CMS
11/03/16	\$38,574.00	VAP notified vendor State mailed VAP payments to vendor. Still unrecovered 55 days later.	CMS
09/28/16	\$221,000.00	VCF notified vendor (Rush) and CMS of payments sent erroneously to the vendor.	CMS
09/19/16	\$41,000.00	VAP notified vendor (IBM) and CMS of payments sent to vendor instead of VAP.	CMS
09/19/16	\$125,000.00	VAP notified vendor (IBM) and CMS of payments sent to vendor instead of VAP.	CMS
09/13/16	\$166,737.24	VAP notified CMS that checks were mailed to its lockbox in error.	CMS
08/03/16	\$405.54	VAP notified CMS funds were sent to another qualified purchaser in New York when VAP lockbox was in Chicago.	CMS
07/10/13	\$2,000,000.00	VAP notified CMS that 2 months of Fidelity payments sent directly to vendor.	CMS

Note: VAP – Vendor Assistance Program; VCF – Vendor Capital Finance; DoIT – Department of Innovation and Technology.

Source: OAG developed from CMS documentation.

It would appear that offering qualified purchasers the ability to receive Program payments in a method such as a direct deposit would keep payments from being misdirected to an incorrect party. We asked IFP if it had requested payment from the State by direct deposit or hardcopy warrant. An IFP official responded, *“We’ve repeatedly requested and would prefer an electronic funds transfer ‘EFT’ (i.e., direct deposit or ACH). We’ve been consistently told that EFTs are not available for QPs and have never been given an explanation why. One potential answer is that the IOC perceives that they’re penalizing the QPs by causing deliberate delays between the time Warrants are released and received due to postal transit times and misdirected payments.”* The official, when asked if direct deposit would keep the State from misdirecting the payments, replied, *“Absolutely. And the cost savings to the State would be significant as well. This is pretty much industry-standard practice for payments of this type. It’s far faster and more secure than having paper warrants in the mail.”*

IOC officials indicated that the cost of hardcopy warrant versus a direct deposit is not easy to figure out. Mailing would cost approximately 40 cents for postage while a direct deposit would cost 2 cents. IOC officials were not sure of the printing costs for a hardcopy warrant. During FY19-20, under the Program, the five qualified purchasers reported the State paid out:

- **\$2,773,235,732.68 for 8,246 base invoice payments; and**
- **\$352,493,265.67 for 4,345 prompt payment interest penalty payments.**

Vendor Assistance Program, a qualified purchaser that processed large numbers of agency payments in FY19-FY20, reported:

- **2,550** base invoice payments by the Department of Corrections in FY19;
- **1,114** base invoice payments by the Department of Corrections in FY20;
- **1,423** base invoice payments by the Department of Innovation and Technology in FY19;
- **2,351** prompt pay penalty invoice payments by the Department of Corrections in FY19; and
- **549** prompt pay penalty invoice payments by the Department of Corrections in FY20.

The Program Terms state, *“In consideration of the payment of the Purchase Price, a Participating Vendor will assign to the Qualified Purchaser **all of its rights to payment** of such Qualified Account Receivable, **including all current and future prompt payment penalties due** relating to such Qualified Account Receivable in accordance with the Prompt Payment Act.”* [Emphasis added.]

An IOC official reported, *“The IOC understands there have been payments made to the original vendor instead of the QP. That is due to the fact that the agency did not code the voucher properly when submitted to the IOC for payment. These address issues have mainly all been with the PPI [Prompt Payment Interest] payment.”* As we noted earlier in this section, there have been instances where the IOC simply mailed the checks to the wrong party.

The IOC could not provide a definitive reason for not allowing qualified purchasers to utilize direct deposit. The IOC told auditors that for tax purposes, the IOC cannot send base payments or prompt pay penalties to qualified purchasers through direct deposit. An official indicated it was in the assignment agreement, but could not provide an assignment agreement that contained this language. The IOC, while not pointing out the tax reference in the assignment agreement or Program Terms, responded, *“As far as taxes the IOC follows IRS regulations.”*

Misdirection of State payments under the Program creates an inability of qualified purchasers and State vendors to reconcile the transactions under the Program.

Misdirected Payments

RECOMMENDATION NUMBER

6

The IOC should take the steps necessary to eliminate sending payments under the Vendor Payment Program to the incorrect entity. Additionally, the IOC should consider having vendors and qualified purchasers contact the IOC when State payments have been misdirected. Finally, the IOC should determine the cost of processing payments on hardcopy warrants for the Program to determine whether it is the most cost effective process.

IOC Response:

The recommendation has three parts:

1. The IOC agrees to work with State agencies and CMS to remind agencies to correctly submit a voucher for VPP payments to the original vendor with the QP's name and mailing address below it. The IOC sends the payment to the name and address on the voucher as it is submitted for payment by each state agency.
2. The IOC is not opposed to having vendors contact us when payments are sent to the original vendor. The IOC has not been opposed to working with or receiving information from QP's on tracking payments. However, the most direct and efficient way to remedy the situation after a payment has been sent to the original vendor is for the QPs to go to the agency making the original payment to the vendor. After vouchers are sent to the IOC for payment, the IOC can't make changes to a voucher without an agency's approval. Vendors were not turned away from the IOC if they called about payments.
3. The IOC strongly disagrees with the OAG's conditions found that lead to the recommendation to determine the cost of processing hardcopy payments versus direct deposit to determine the most cost-effective process for the VPP payments.
 - *"The IOC, as noted on the IOC website, offers vendors who provide goods and services to the State of Illinois a more efficient and secure method of receiving their payments through an Electronic Funds Transfer (EFT) Direct Deposit system. Direct deposit payments **bypass the printing and mailing procedures** and are transmitted electronically to the vendor's financial institution for posting to its accounts. Generally, payments made via direct deposit take two banking days to be debited to the account specified."*

"While State vendors can receive their payments via direct deposit from the IOC, qualified purchasers cannot. Payments of the base invoice amount and the prompt pay penalties are remitted by the IOC to the qualified purchasers via hard copy warrants." These statements are true; however, the IOC believes they are misleading. As previously explained to the OAG, the IOC is not making a choice to send QPs only hard copy warrants; and thereby, slowing down their payments and costing the QPs and the state more money. Due to IRS reporting requirements and the State Accounting Management System (SAMS) limitations, VPP payments can only be sent via hard copy. For correct tax reporting, the IOC must link the original vendor and the payment made to the original vendor for performing services or providing materials to the State in order to report the correct amounts on the 1099 tax form. When a voucher is sent from an agency for prompt payment interest to the qualified purchaser, the payment must be made to the original vendor, using their tax identification number, and in care of the QP using the QP's address. If the agencies do not include the qualified purchaser's information on the voucher, the IOC system will send the payment to the vendor's address on the voucher. But, because the original vendor is on the voucher, the IOC will attach the proper 1099 tax information to the original vendor. If the tax edits and direct deposit edits were eased up to allow for two vendors, there is a greater chance of 1099 tax mistakes and deposits being made to wrong bank accounts. The hardcopy warrant eliminates this potential risk.

- *"Misdirected payments occur when payments are sent to the wrong vendor. We asked the IOC, on October 29, 2020, if it thought the misdirection of State payments to the incorrect party was a problem for the Program. The IOC replied, "Not really. The volume appears to be low and the*

parties of the contract are responsible to address any potential receivable processing issue.” The IOC agrees that a payment being sent to the wrong vendor via hardcopy or direct deposit is not an acceptable standard of practice. However, the payments questioned in this audit are being sent directly to the original vendors because the state agencies are directing the IOC to do so. If the paying state agency has not correctly entered the QP’s address on the voucher, the only information the IOC has is to send the payment as directed by the agency. The original vendors have a written and binding contractual agreement requiring them to forward the “misdirected” payments to the qualified purchaser. These payments are neither going to unknown vendors nor are they lost.

- The IOC does not dispute that direct deposit is less expensive than making payments via warrants. The IOC is not choosing to implement the program in more costly, less efficient manner by sending hard copy warrants. As explained to the OAG, due to 1099 tax reporting and system editing limitations for fraud control, qualified purchasers can only receive hard copy warrants because direct deposit edits allow for only one vendor name and number per voucher. The recommendation by the OAG to allow for qualified purchasers to be allowed to receive payments through direct deposit in order to save money is not possible without easing up on system edit checks for direct deposit fraud and inaccuracy in 1099 reporting.

Auditor Comment #4:

The IOC cites the contractual relationship between the qualified purchaser and vendors as their responsibility to reconcile. While that might be true, there were other forms of misdirected payments including payments sent to the wrong qualified purchasers and instances of payments to the wrong sub-participant. That contractual relationship, based on a document developed by the State, has the vendor assigning all rights to payments from the State to the qualified purchasers. We think that this problem of misdirected payments, which the finding shows has been around since at least July 2013, should be resolved by the State of Illinois and not between the vendors and qualified purchasers. Those entities have historically waited long enough for their payments without chasing the funds due to the State misdirecting the payments.

The IOC disagreement with the condition section of the finding is confusing given the IOC states the text cited is accurate. The IOC states we are misleading yet much of the text comes from the IOC website.

The IOC blames this misdirection of payments on the system edit limitations in SAMS as well as tax reporting, which should have been known prior to the enactment of Public Act 100-1089. However, the IOC reported that misdirected payments were “not really” a problem, when questioned. “The volume appears to be low and the parties of the contract are responsible to address any potential receivable processing issue.” As shown in the finding, just five months prior to Public Act 100-1089 becoming effective, over \$13 million in checks were misdirected to an incorrect sub-participant.

For interest payments due under the Prompt Payment Act, which are the majority of the misdirected payments in question, it is unclear why those payments would ever be sent to the vendor or why the vendor would report the assigned interest on a 1099. By execution and delivery of an Assignment Agreement to a qualified purchaser, a vendor consents to the assignment of all of its rights to payment by the State of a base invoice amount and any associated prompt pay penalties. Auditors twice asked, on November 19, 2020 and May 12, 2021, for the tax reporting requirements. The IOC has never provided those tax reporting requirements to us.

Monthly Reporting Deficiencies

CMS and the IOC have not taken the necessary actions to confirm that all qualified purchasers have complied with the monthly reporting requirements for the Vendor Payment Program (Program). This has **resulted in missing data** on the monthly reporting that occurred during FY19 and FY20. Additionally, the **guidance on what should be reported is inconsistent** with the directives from the State Prompt Payment Act (Act).

Qualified purchasers must report monthly information to CMS and the IOC relative to the Program. The **criteria** for the information to be contained in these reports comes from four sources: the State Prompt Payment Act; joint rules of the IOC and CMS; the Program Terms; and guidance provided by CMS on September 21, 2018.

The IOC reported, on May 15, 2020, *“The Qualified Purchasers submit all the information to the IOC. No additional information is provided by CMS or IOC.”*

CMS reported, on May 18, 2020, that information comes from the qualified purchasers and if CMS spots an error or other issue it contacts the qualified purchaser to update the report and resubmit. However, this **differs with what CMS told qualified purchasers** when it supplied the monthly reporting template to the qualified purchasers on September 21, 2018. In that correspondence, CMS stated, *“Please complete as fully as you can, and we will embellish any data as necessary, and work to improve any processes for data collection as necessary moving forward.”* [Emphasis added.]

The guidance and reporting templates provided by CMS, and according to CMS approved by the IOC, consisted of six spreadsheets for reporting. Those spreadsheets were for:

- Receivables Assigned,
- State Payments Received,
- State Penalty Payments Received,
- Invoices Outstanding,
- Invoice Summary, and
- Outreach Stats.

CMS highlighted, for the qualified purchasers, the portions of the reporting spreadsheets that were required by Public Act 100-1089.

Inconsistency in Criteria

During the audit we examined the four sources of criteria to determine whether they were consistent with what was to be submitted. We determined that the **criteria were not consistent**. Specifically:

- The joint IOC and CMS administrative rules and the Program Terms **did not include the criteria** from the Act relative to the aggregate number and dollar value of invoices purchased by the qualified purchaser for which no voucher has been submitted. CMS reported the criteria was added for the Vendor Support Initiative (VSI) and the Terms were not updated. VSI was a State of

Illinois program that allowed vendors to receive funding under the same terms as the Vendor Payment Program for all invoices that did not yet have a State appropriation during the budget impasse.

- The CMS guidance to the qualified purchasers **did not include criteria** from the Act relative to: identifying the relevant application period for each assigned receivable; and, for the payment of penalty amounts the associated assigned receivable, including the State contract number, voucher number, and State agency associated with the assigned receivable, and identifying the relevant application period for each assigned receivable. CMS reported, *“In general though, we have not been able to document ‘formal’ application periods to include in this data.”*

Monthly Reporting Review

During the audit we summarized the monthly reporting for FY19 and FY20 reports submitted by the qualified purchasers. We not only wanted to report compiled data for the period but wanted to use the information to select some receivables to include in our testing. We found monthly reporting had items not completed and we had to clean data up to conduct audit testing.

Issues we had with the FY19-FY20 monthly reports, utilizing Exhibit 11 for reporting requirements, included:

- missing dates for assigned receivables (Exhibit 11 #1);
- missing State contract numbers (Exhibit 11 #1);
- missing voucher numbers (Exhibit 11 #1);
- missing payment dates (Exhibit 11 #2);
- missing State contract numbers (Exhibit 11 #2);
- missing voucher numbers (Exhibit 11 #2);
- missing relevant application period (Exhibit 11 #2);
- missing associated assigned receivable information (Exhibit 11 #3); and
- missing aggregate number and dollar amount of invoices for which no voucher had been submitted (Exhibit 11 #6).

The Act (30 ILCS 540/8(f)(9)) requires each qualified purchaser, at its sole cost and expense, to submit a monthly written report, in an acceptable electronic format, to the IOC and CMS, within 10 days after the end of each month. The makeup of those reports is detailed in the Act and included in Exhibit 11.

Exhibit 11

MONTHLY REPORTING REQUIREMENTS – VENDOR PAYMENT PROGRAM

Requirement
1. A listing of each assigned receivable purchased by that qualified purchaser during the month, specifying the base invoice amount and invoice date of that assigned receivable and the name of the participating vendor, State contract number, voucher number, and State agency associated with that assigned receivable.
2. A listing of each assigned receivable with respect to which the qualified purchaser has received payment of the base invoice amount from the State during that month, including the amount of and date on which that payment was made and the name of the participating vendor, State contract number, voucher number, and State agency associated with the assigned receivable, and identifying the relevant application period for each assigned receivable.
3. A listing of any payments of assigned penalties received from the State during the month, including the amount of and date on which the payment was made, the name of the participating vendor, the voucher number for the assigned penalty receivable, and the associated assigned receivable, including the State contract number, voucher number, and State agency associated with the assigned receivable, and identifying the relevant application period for each assigned receivable.
4. The aggregate number and dollar value of assigned receivables purchased by the qualified purchaser from the date on which that qualified purchaser commenced participating in the Program through the last day of the month.
5. The aggregate number and dollar value of assigned receivables purchased by the qualified purchaser for which no payment by the State of the base invoice amount has yet been received, from the date on which the qualified purchaser commenced participating in the Program through the last day of the month.
6. The aggregate number and dollar value of invoices purchased by the qualified purchaser for which no voucher has been submitted.
7. Any other data the State Comptroller and the Department may reasonably request from time to time.

Source: OAG compiled from the State Prompt Payment Act.

The Act (30 ILCS 540/11) also details a Program accountability portal. The Act states, *“The Department of Central Management Services and the State Comptroller shall publish on their respective Internet websites: (1) the monthly report information submitted [by qualified purchasers]; and (2) the information required to be submitted [relative to financial backer disclosures].”*

A CMS official reported, *“Monthly reporting was intended to provide transparency, but administrative implementation and guidance for these monthly reports did not allow for enforcement nor complete data reconciliation by CMS or the IOC. CMS lacked the resources and data to fully reconcile outstanding invoices and interest payments due to the delay in payments, the budget impasse that tracked invoice numbers instead of voucher numbers, and the bundling of interest payments into one or more vouchers. Contract numbers were never tracked nor programmed for the VPP, and we have recommended legislation to eliminate this requirement, as we do not collect the data. Formal application periods have not been documented in previous reporting.”*

An IOC official reported on August 3, 2020, *“The IOC relies on CMS to raise specific questions about data, missing or otherwise, because CMS, the agency*

that created the Vendor Payment Program and oversaw it years before IOC’s involvement under P.A. 100-1089, is the more experienced agency for this program and IOC relies on the expertise of CMS on the aspect of monitoring the accuracy of data.” While the official indicated the IOC became involved in the Program with the passage of the Public Act effective August 24, 2018, **the administrative code was amended effective July 29, 2011, creating a vendor payment program that is approved by CMS and the IOC.**

Inconsistent reporting criteria increases the chance that needed Program information will not be provided.

Monthly Reporting Deficiencies	
RECOMMENDATION NUMBER 7	<p><i>CMS and the IOC should take the steps necessary to make all monthly reporting criteria be consistent for the Vendor Payment Program. Additionally, CMS and the IOC should confirm that all required information is submitted by the qualified purchasers on the monthly reports.</i></p>
<p>CMS Response:</p> <p>CMS agrees with the recommendation. CMS will work with the IOC to confirm that all required information is submitted consistently by the qualified purchasers.</p>	
<p>IOC Response:</p> <p>The IOC agrees that additional steps could be attempted to provide more consistent reporting to CMS and the IOC. However, the lack of resources and data to fully reconcile outstanding invoices and interest owed, among the items previously noted by CMS, make it virtually impossible to have 100% consistency in reporting.</p>	
<p><u>Auditor Comment #5:</u></p> <p><i>While the IOC agrees with the recommendation and makes note that more steps could be attempted to make more consistent reporting, the IOC uses the excuse of a lack of resources and data for not taking these steps. This lack of consistent reporting is not only a failure to comply with the Act by the qualified purchasers, but also questions whether the State is getting all the needed Program information.</i></p>	

Ineligible Accounts Receivable

CMS allowed qualified purchasers in the Vendor Payment Program (Program) to submit, for approval and acknowledgment, receivables which were not yet eligible under the State Prompt Payment Act (Act).

Assignment agreements are executed agreements **between qualified purchasers and State participating vendors** as part of the Program. The agreements, which list the receivables the qualified purchaser is buying, are submitted by the qualified purchaser to CMS for formal acknowledgment of the receivables into the Program.

Receivables submitted on the assignment agreement must be qualified accounts receivable, meaning, among other areas it must be 90 days or older.

CMS verified that for a receivable to be part of the Program, and a qualified receivable that it had to **be at least 90 days older than the proper bill date** for the receivable.

During the audit we conducted testing to determine whether qualified purchasers made timely payments to participating vendors as part of the Program. Four qualified purchasers agreed to participate in the audit: Vendor Assistance Program, Illinois Financing Partners, Vendor Capital Finance, and Payplant. Only **one qualified purchaser**, Vendor Premium Payment Assistance, **elected not to participate** in the audit.

In our analysis, after receiving documentation from the qualified purchasers, we calculated the eligibility of the receivables based on whether the receivable on the assignment agreement was 90 days past the proper bill date for the receivable. We found:

- Vendor Assistance Program had 36 percent (9 of 25) of the receivables from our sample that were not 90 days old when included in the assignment agreements. These receivables were between 6 and 31 days early.
- Vendor Capital Finance had 8 percent (2 of 25) of the receivables from our sample that were not 90 days old when included in the assignment agreements. These receivables were between 12 and 75 days early.
- Payplant had 4 percent (1 of 25) of the receivables from our sample that were not 90 days old when included in the assignment agreements. This receivable, based on the assignment agreement provided by Payplant, was 264 days early. We saw no evidence that CMS questioned this assignment agreement.
- Illinois Financing Partners did not have any of the 25 cases where our analysis concluded the receivables were not 90 days old. However, this qualified purchaser did not provide three assignment agreements for our testing.

Section II.4 of the Program Terms requires the qualified purchaser to execute and deliver to the participating vendor an assignment agreement evidencing the qualified purchaser's **acceptance of the receivables into the Program**. We

would think that any receivable not 90 days old should not be in the assignment agreement based on this criteria.

A CMS official reported *“CMS has an ongoing process to submit all transactions at 90 days or older. Transactions are submitted to CMS that are between 60 and 90 days old to keep the pipeline moving and to give the opportunity to have paperwork ready for approval.”*

We note that while none of the cases from our testing were acknowledged/approved by CMS before 90 days old, the inclusion of those receivables does not fit the definition of a qualified account receivable.

The Act details the Program (30 ILCS 540/8(a)). The Act defines a Qualified Account Receivable as *“An account receivable due and payable by the State that is outstanding for 90 days or more, is eligible to accrue prompt payment penalties under the Act, and is verified by the relevant State agency. A qualified account receivable shall not include any account receivable related to medical assistance programs (including Medicaid) payments or any other accounts receivable, the transfer or assignment of which is prohibited by, or otherwise prevented by, applicable law.”*

A CMS official reported to auditors, relative to qualified purchasers including receivables not yet 90 days old in assignment agreements that *“Qualified Purchasers have operated in this fashion but I do not know if documentation exists to show approval. The programming through DoIT (Department of Innovation and Technology) was set up [to] include vouchers at 60 days and older, so I can only assume this was a conscious decision.”*

If a qualified purchaser submits an assignment agreement containing receivables that are not 90 days old, and thus not qualified accounts receivable, the qualified purchaser is in violation of the Program Terms. CMS, when allowing this to occur, runs the risk that a receivable may be paid prior to eligibility for the Program.

Ineligible Accounts Receivable

**RECOMMENDATION
NUMBER**

8

CMS should enforce the requirements of the State Prompt Payment Act relative to only eligible receivables being included in the assignment agreements submitted by qualified purchasers. If CMS believes the inclusion of receivables less than 90 days old is appropriate it should seek changes to the Act and the Vendor Payment Program Terms.

CMS Response:

CMS does acknowledge that vendors sign off on receivables prior to 90 days and therefore not yet eligible for the program; however, CMS does not finalize approval paperwork nor submit final documentation that includes any receivables that are not ultimately eligible. This is evidenced by the fact that no exceptions were noted as part of this finding. CMS considers the final approved paperwork to be the official Assignment Agreement, as many receivables that are included in the original paperwork are not ultimately assigned due to factors such as payment already made to the vendor, ineligible funding sources, or administrative holds, to name a few. CMS recognizes the point in this recommendation and will modify the Vendor Payment Program Terms and the Assignment Agreement paperwork to provide a disclaimer that receivables submitted prior to 90 days will not be eligible for VPP until 90 days from Proper Bill Date. CMS will continue to operate as it currently does, while modifying the Terms and adding the disclaimer to the paperwork.

Violation of Program Terms – Monitoring

CMS and the IOC have allowed qualified purchasers to operate the payment process under the Vendor Payment Program (Program) in violation of the Program Terms. This can result in one qualified purchaser having a competitive advantage over another if its payment terms are more generous than another qualified purchaser.

The Program has a set of Program Terms that participating State vendors and qualified purchasers have to follow. These Program Terms are dated December 13, 2012. Additionally, the Program Terms set out how CMS must monitor the Program.

The Program Terms define the payment process to be utilized by the qualified purchasers as part of the Program. Qualified purchasers submit a CMS-designed assignment agreement to CMS listing all the receivables it would like to purchase. CMS then approves, via an acknowledgement, the assignment agreement prior to qualified purchasers making payment to the State participating vendor. Payments are to be made in two installments based on the Program Terms:

- 90 percent of the receivable purchase price is to be paid as an initial payment to the State participating vendor within 10 days of CMS acknowledgement; and
- 10 percent of the receivable purchase is to be paid within 5 days of the qualified purchaser receiving the payment from the State for the prompt payment interest penalty.

Monitoring of the Program is **important to protect the State vendors that participate** in the Program. During the audit we discovered an October 1, 2019 email from a State vendor that had participated in the Program to CMS. The correspondence detailed:

- On October 22, 2015, its \$351,410 invoice was assigned to Capital Restoration Fund as a qualified purchaser.
- On November 13, 2015, the vendor received a payment of \$316,269 on the receivable.
- On February 25, 2016, the vendor received another \$20,413.
- That left a balance of \$14,728.
- The qualified purchaser closed its doors. (Note: CMS was unable to tell us when Capital Restoration Fund left the Program.)

The vendor again asked CMS for help in recovering the funds on November 27, 2019. A CMS official replied on December 5, 2019, *“I talked to CDB [Capital Development Board] and it appears there is nothing they can do to assist. I have forwarded this to our legal department to ask for direction on how we want to handle a QP that is no longer active. **I assume other vendors may have issue as well.**”* [Emphasis added.]

Violations of the Standard Payment Program Terms

During the audit, we reviewed a number of assignment agreements and examined payments made under the Program Terms. We found a number of instances where the qualified purchasers were **not operating under the 90/10 two-payment process** detailed in the Program Terms. These are described below.

CMS was apparently aware of these non-Program Term processes. It admitted, in a September 14, 2020 email, *“The QPs have made changes in the past [to the assignment agreement percentages], but we curtailed that.”* After the passage of Public Act 100-1089, CMS sent a correspondence, on June 26, 2019, to the qualified purchasers that informed them of this audit that would be conducted and reminding them of the terms and condition of the Program. Included in that correspondence was a reminder that there should be a 90/10 payment process with an exception for employee benefits and life insurance receivables which CMS allows for a 100 percent payment up front after CMS acknowledgement of the purchase. Regardless of that correspondence, CMS should not have allowed qualified purchasers to deviate from the Program Terms, terms which have been in place since 2012.

CMS also told us, *“If deviations were approved by legal they were not always communicated to our operational area, but that was an ongoing problem we had.”*

Vendor Assistance Program (VAP) – paying interest to participating vendor:

- On October 21, 2020, VAP responded to our questions during timely pay testing. We found VAP was making not two payments but three payments under the Program and was paying a portion of the interest to a participating vendor. VAP stated, *“Wexford is a very large vendor, and we entered into an addendum with them on all transactions that would allow them to retain the rights to any prompt penalty that accrued prior to the actual funding of the receivable.”* The addendum to the assignment agreement detailing this arrangement was not shared with CMS.
- Under this sample case, Wexford sold a \$262,349.14 receivable to VAP. When VAP made the initial 90 percent payment to Wexford it also paid \$10,562.18 in interest accrued to that date. This is outside the Program Terms which states that the participating vendor, in consideration of the payment of the purchase price, assigns all of its **rights to current and future prompt pay penalties** to the qualified purchaser.
- On January 7, 2021, VAP told us that Wexford made the payment of the accrued interest to Wexford contingent in order to sell the receivable to VAP. VAP added that other vendors had not asked for, nor had VAP offered, this same treatment. Finally, VAP was unaware whether the IOC and CMS were aware of the Wexford situation.

Vendor Capital Finance (VCF) – payment schedule outside Program Terms:

- During timely pay testing we found a VCF case where the original assignment agreement listed the 90/10 payment schedule. However, an addendum to the assignment agreement stated VCF would pay Wexford at an 88/12 split. There was no CMS acknowledgment correspondence presented to us by VCF so we are unaware if CMS approved the purchase or the addendum.

Illinois Financing Partners (IFP) – payment schedule outside Program Terms:

- During timely pay testing we selected 25 receivables purchased by IFP during FY19-FY20 that had base payments made. Additionally, we selected 25 cases where prompt pay penalty payments were made. IFP reported to us that all 50 cases were paid 100 percent upfront. While assignment agreements detailed the 100 percent payment we saw no indications why CMS would allow this payment arrangement.
- On August 3, 2020, IFP reported, *“IFP’s original understanding of the VPP Program Terms was that 90% was the minimum Initial Payment allowed. A 100% upfront payment is to the advantage of the Vendor.”*

Payplant – payment schedule outside Program Terms:

- In response to our question, on September 25, 2020, Payplant reported, *“from time to time Payplant advanced more than 90% of the base invoice amount. In each case our assignment agreement highlights the percentage advanced, and the State receives a copy of each agreement.”*

Vendor Premium Payment Assistance (VPPA) – payments outside Program Terms:

- CMS documentation showed that VPPA, in 2018, was advertising 100 percent payments in three business days as part of the Program.
- A CMS official from the Legal Department told another CMS official on January 7, 2019, *“Unfortunately, whether to accept a transaction at 100% for non-benefit transactions is a senior management decision and not within my [purview]. Please note that even benefit transactions fluctuate between 90 and 100% (depending on the QP).”*
- According to CMS on July 10, 2019, VPPA did not provide the assignment agreement addendum to CMS for approval. This would have created a competitive advantage for VPPA had CMS not placed a hold on VPPA activity in the Program.
- While CMS is commended for the final action taken, it highlights the need for extensive oversight of the Program.

Rebate Process

During the audit we discovered a January 2, 2014 email from a former CMS Chief Operating Officer who was overseeing the Program to another CMS official. The email stated, *“Qualified purchaser CAN rebate a fraction of their percentage profit back to a business to entice the business to join the program. e.g. instead of QP taking 1% the QP takes .5% and gives the vendor the extra .5%”*

back as a rebate. We would just need to know the terms of the agreement and approve it.” The **Program Terms do not delineate a “rebate” program** for this State-sponsored Program.

We asked CMS, on January 14, 2021, about the “rebate” program. CMS told us:

- “CMS is not aware of any ongoing rebate process.”
- “The rebate process is not included nor specifically excluded from any criteria that the VPP operates under.”
- “As it is not specifically excluded, CMS assumes it was a tool used to encourage vendor sign-up. As these are arrangements and assets are between the vendor and QPs, it is a low-risk area for the State of Illinois to monitor.”
- “CMS does not currently approve nor monitor any rebate process.”

While CMS considers this “low-risk,” the Program is operated by the State and CMS and the IOC have a responsibility to monitor the Program based on the Program Terms the qualified purchasers acknowledged they would follow.

The Illinois Administrative Code (74 Ill. Adm. Code 900.125 (a)) and the State Prompt Payment Act as amended by Public Act 100-1089 (30 ILCS 540/8(c)) delineate the authority for the establishment and implementation of the Program to **rest with the IOC and CMS**.

The Program Terms are a set of requirements that include: the establishment of the Program; the operation of the Program; the payment of purchase price/deferred payment reserve account; other obligations of qualified purchasers and sub-participants; adopted amendments; and term and termination.

A CMS official reported, “CMS Operations does not have any documentation to allow different terms; QPs were allowed to negotiate alternate terms only with CMS approval.” The official added, “CMS Operations does not have this documentation that would have been provided by CMS Legal at the time.” We would note that without documentation, **CMS has no evidence to support that legal actually approved these violations** of the Program Terms.

CMS also reported, on August 27, 2020, “CMS does not have a formal process to review performance to ensure obligations are in compliance. We work with the QPs on an ongoing basis and rely on the vendors to self-report issues with the QP’s. We have an open door policy and informally discuss issues with our QP’s on an ongoing basis.”

An IOC official, when asked about IOC oversight relative to verification to the 90/10 payment process, replied, “Defer to CMS since they are the administrators of the program and have been since its inception.” We would note to the official that administrative rules (74 Ill. Adm. Code 900.125 (g)) and the State Prompt Payment Act as amended by Public Act 100-1089 (30 ILCS 540/8(c)) **give the IOC the right to review performance and implementation** of its obligations for the qualified purchasers.

When CMS and the IOC allow qualified purchasers to violate the payment process detailed in the Program Terms it creates an inequality among the qualified

purchasers. One qualified purchaser could gain a competitive advantage over another if its payment terms are more generous than another qualified purchaser.

Violation of Program Terms – Monitoring

**RECOMMENDATION
NUMBER**

9

CMS and the IOC, as the parties responsible for the Vendor Payment Program, should ensure that qualified purchasers operate under the Program Terms relative to the payment process.

CMS Response:

CMS agrees with the recommendation. CMS will amend the Program Terms to ensure that qualified purchasers are operating in compliance with the terms.

IOC Response:

The IOC disagrees with the claim that the IOC shares responsibility with CMS in this finding. This finding also fails to recognize that all administrative duties related to the operation of the Program do and always have rested with CMS. The IOC will agree to seek to clarify the IOC’s role via an IGA with CMS.

Auditor Comment #6:

We again disagree with the IOC’s conclusion that we failed to recognize that all administrative duties related to the operation of the Program do and have always rested with CMS. We reiterate that per the Act, the IOC has the right to review performance. We believe the payment process is part of qualified purchasers’ performance under the Program. We would think the IOC would want to ensure the qualified purchasers make payments in compliance with the Program.

Vendors with more than one Qualified Purchaser

CMS and the IOC did not enforce the Program Terms when they allowed participating vendors to sell receivables among different qualified purchasers.

The Program Terms address many requirements including assigning receivables between a participating vendor and a qualified purchaser. **These Program Terms have been in effect since December 13, 2012.**

Program Terms Section II.7 states, *"If a Qualified Purchaser has complied with the terms of the Program, as well as the terms of any Assignment Agreement between a Qualified Purchaser and a Participating Vendor, such Participating Vendor will be prohibited from assigning any of its Qualified Account Receivables to any other Qualified Purchaser under this Program, other than its existing Qualified Purchaser or an entity managed or affiliated with such existing Qualified Purchaser, unless the Qualified Purchaser with which the Participating Vendor previously contracted is temporarily or permanently not participating in the Program."* [Emphasis added.]

Consistent with the Program Terms, CMS has taken the position that a participating vendor cannot switch around among qualified purchasers. An October 29, 2013 email from a potential qualified purchaser asked a CMS official whether signing up with one qualified purchaser effectively locks the participating vendor into that one qualified purchaser. The CMS official responded, *"The vendor becomes 'wed' to one qualified purchaser. They cannot switch around. This is primarily for the protection of the QP."*

However, during our audit work, we found evidence that participating vendors had sold receivables to more than one qualified purchaser:

- We combined the FY19-FY20 monthly reports submitted by the qualified purchasers, including the submitted information on receivables assigned, to test and see if participating vendors had sold receivables to more than one qualified purchaser. We found five instances during those two fiscal years where a participating vendor had sold receivables, at different times, to multiple qualified purchasers. Exhibit 12 provides information on the five cases including the number and dollar amount of receivables sold.
- Also, prior to FY19, we found that a State vendor, Health Alliance, had originally sold receivables to another qualified purchaser, Vendor Capital Finance. An official from Vendor Capital Finance stated that Health Alliance switched to another qualified purchaser (Vendor Assistance Program) because that qualified purchaser paid 100 percent upfront.
- We found that while CMS was aware that Health Alliance had sold to multiple qualified purchasers, an official told us on February 9, 2021, that the official was **not aware of other State vendors with more than one qualified purchaser**. We would note, as shown in Exhibit 12, that there were between 3 and 234 receivables purchased. We provided the information in Exhibit 12

to CMS and CMS confirmed that the “vendors did sell to multiple QP’s during FY19-FY20.”

- We were told by the CMS official, in response to our question of who would have approved switching to other qualified purchasers that “The decision was made to allow this prior to my arrival, but I believe it was approved by CMS legal department. I have not seen documentation of the approval.”

Exhibit 12
PARTICIPATING VENDORS SELLING RECEIVABLES TO MORE THAN ONE QUALIFIED PURCHASER
 FY19-FY20

Participating Vendor	Qualified Purchaser	Count of Receivables	Total Assigned Receivables
Advanced Commodities	IFP	92	\$2,716,108
	VAP	234	\$6,703,406
Fisher Scientific	Payplant	13	\$33,972
	VPPA	33	\$45,313
Health Alliance	IFP	51	\$874,188,166
	VAP	3	\$51,189,606
Healthcare Service Corporation	Payplant	7	\$65,860,094
	VAP	42	\$445,064,078
Illinois Bell Telephone Company	VPPA	7	\$2,966,864
	VAP	90	\$23,600,636

Note: IFP – Illinois Financing Partners; VAP – Vendor Assistance Program; VPPA – Vendor Premium Payment Assistance.

Source: OAG developed from CMS documentation.

Most importantly, the only way under the Program Terms to switch qualified purchasers is to **have a qualified purchaser not operate under the terms of the Program** or the assignment agreement. We asked CMS if it had any documentation to support that any qualified purchaser had not complied with Program Terms. On February 9, 2021, CMS replied, “*No, CMS does not have documentation to show that a certain QP had not complied with the terms of the Program.*” [Emphasis added.]

A CMS official reported to auditors, “*It was previously interpreted by CMS that multiple QP’s could be used if they didn’t simultaneously try to assign the same receivable. We cannot find documentation of this decision.*” The official added that the decision, **to allow the practice which violated the Program Terms**, “*predated FY19 and FY20, but [CMS official] remembers it was made by [former CMS Assistant Director] in connection with [former CMS Deputy General Counsel].*” CMS could not provide documentation to support the decision.

An IOC official reported, “*The IOC is not involved with oversight of the QPs. CMS deals directly with overseeing the QPs.*” We would note that, as detailed in Recommendation Number 1 of this report, State statute and administrative rule authorize the IOC to be part of the Program even though the **direction does not detail specific responsibilities for the IOC.**

When participating vendors utilize more than one qualified purchaser, and there is no documentation to support that any qualified purchaser acted out of compliance, it is a violation of the Program Terms. Additionally, failure of CMS and the IOC to enforce this requirement is an abdication of their oversight responsibility.

Vendors with more than one Qualified Purchaser

**RECOMMENDATION
NUMBER
10**

CMS and the IOC should follow the Program Terms for the Vendor Payment Program and only allow participating vendors to utilize a single qualified purchaser unless that qualified purchaser has violated terms of the assignment agreement or Program. Additionally, CMS should maintain documentation to support why it approved to allow a participating vendor to utilize more than one qualified purchaser at a time.

CMS Response:

CMS agrees with the recommendation. CMS will work with the vendors to identify one qualified purchaser to work with moving forward.

IOC Response:

The IOC disagrees with the claim that the IOC shares responsibility with CMS in this finding. This finding also fails to recognize that all administrative duties related to the operation of the Program do and always have rested with CMS. The IOC will agree to seek to clarify the IOC's role via an IGA with CMS.

Auditor Comment #7:

We again disagree with the IOC's conclusion that we failed to recognize that all administrative duties related to the operation of the Program do and have always rest with CMS. We reiterate that per the Act, the IOC has the right to review performance. We believe vendors switching between different qualified purchasers for the sale of receivables is a part of qualified purchaser performance and a violation of Program Terms.

Prompt Payment Interest

The IOC does not have a plan for payment of interest penalties under the Vendor Payment Program (Program). This lack of a plan has resulted in delayed payments which has a negative impact on both qualified purchasers and State vendors. In our sample of interest payments during FY19-FY20, **payments were made between 0 and 547 days from when the State agencies requested the payments.**

Program Terms state, *“In an effort to counter the negative effects that State vendors are experiencing due to the delay in payment of approved vouchers and to ensure faster vendor payment, the State is implementing a program to give qualified institutions the opportunity to purchase outstanding accounts receivable directly from vendors of the State and, through the assignment of such accounts receivable by the vendors, to become creditors of the State.”*

Additionally, the terms set out the payment process associated with the Program. After a qualified purchaser receives approval of the purchase from CMS, the participating State vendor receives 90 percent of the total receivable amount. After the State pays the qualified purchaser the prompt payment interest penalty the State vendor receives the final 10 percent of the receivable it sold to the qualified purchaser.

Delays in Interest Payments by the IOC

Prompt pay interest amounts are determined by the individual State agencies once the base invoice has been paid by the IOC. The State agencies then submit dated vouchers for the interest payments to be made by the IOC.

During the audit we selected a sample of penalty receivable payments for testing. We obtained the dates State agencies submitted vouchers to the IOC for payment of the interest penalties and then compared that voucher date to the date the IOC actually made the payment of the interest penalty to the qualified purchaser to **determine how long the IOC sat on the payment request.** The results of our analysis, by qualified purchaser, are presented in Exhibit 13. Our overall analysis, **from our sample**, showed:

- The IOC held a penalty voucher submitted by CMS from a receivable sold by Health Alliance to Illinois Financing Partners for **547 days** before payment.
- The IOC held a penalty voucher submitted by CMS from a receivable sold by United Healthcare to Vendor Assistance Program for **537 days** before payment.
- While all qualified purchasers had to wait, on average, approximately three months, or more, before a payment request was actually processed by the IOC, **Vendor Assistance Program had to wait, on average, over 8 months to be paid interest** requested by the State agencies.

Exhibit 13
DELAYS IN PROCESSING PENALTY INTEREST PAYMENTS BY THE IOC
 FY19-FY20 Sample

Qualified Purchaser	Delay Time at the IOC		
	Maximum # Days	Average # Days	Minimum # Days
Vendor Assistance Program	537	251	82
Illinois Financing Partners	547	177	0
Vendor Capital Finance	379	195	53
Payplant	328	86	59

Source: OAG developed from qualified purchaser and IOC documentation.

Qualified Purchaser Views on Delayed Interest Payments

During the audit we were in contact with the qualified purchasers and reviewed nearly 177,000 emails associated with the Program at CMS. Views from the qualified purchasers are provided below.

An Illinois Financing Partners (IFP) official, on March 11, 2021, reported to auditors, *“Although we realize this falls outside your sample, we’d like to highlight that the IOC has been sitting on **unpaid** PPP [Prompt Payment Penalty] vouchers since December 2018. These are now 820 days late from the date of voucher. Without accounting for this ‘ghost’ backlog of unpaid vouchers, the AG won’t have a complete picture of the actual payment delays vendors and QPs are experiencing.”*

The delay in interest payments led IFP to request interest payments instead of base receivable payments. In a February 27, 2018 email to an IOC official, an IFP official explained, *“I received another automated text this morning that you are paying one of IFP’s two remaining [Health Alliance] receivables - \$45,807,919.24. Again, I would respectfully ask that you pull this check and reissue it for the past due accrued PPP. The Comptroller’s willful delays in paying the PPP are simply killing IFP.”*

On October 20, 2017, a Vendor Capital Finance (VCF) official emailed a CMS official regarding penalty interest checks. The VCF official reported, *“What the IOC is doing, in terms of pushing off PPP payments, goes against the understanding that we established with CMS, which is to send checks shortly after invoice payment. While we know that CMS cannot tell the IOC what to do, we are counting on CMS to express our deep unhappiness about this to the IOC....However, if the IOC chooses to pursue avoiding paying PPP checks as an official policy, VCF believes this will have a very negative impact, including:*

- *The continued short-changing of vendors. By delaying the return of the 10%, the IOC is forcing vendors to remain lenders to the State.*
- *The IOC’s action will sharply reduce VPP/VSI liquidity.*

- *As the news gets out on this policy, Illinois bond rates will widen as it is another indication of the State's political willingness to abide by rules that they have created."*

In February 2020, Payplant contacted CMS regarding an update for interest payments because its financial backer was beginning to apply pressure to Payplant for updates.

On August 4, 2020, Vendor Assistance Program (VAP) reported:

- *"There is currently in excess of 95M of prompt payment outstanding on VAP assigned receivables where the base payments have been made. A large portion of this amount is related to receivables whose base payments were made more than 3 years ago. Millions of dollars are owed to vendors who are waiting to receive the final payments due under our assignments. This has created a significant hardship for the vendors."*
- *"We have had no direct contact with the IOC regarding payment cycles/order of payments. Our only source of information on payment cycles is public communication issued by the Comptroller. Please note that in the ordinary course of business, we have, in general terms, communicated frustration with the 3+ year payment cycles for interest payments."*

Issues with Program Interest Payments

CMS apparently made an attempt to get qualified purchasers payments for prompt pay interest penalties. However, on February 13, 2018, an Assistant Comptroller sent a correspondence to the CMS Director that stated, *"The Office of the Comptroller (IOC) is in receipt of correspondence regarding CMS's position of insisting late payment interest penalty payments be paid before outstanding direct payments to healthcare providers under the Group Health Insurance Program. While the IOC believes that the late payment interest penalties must eventually be paid and we further recognize the role of third-party lenders in maintaining continuity in state government operations as long as we are challenged by significant bill payment backlogs, we are concerned with the requested prioritization of these late payment interest penalties."* The IOC wanted CMS to reverse course on the penalty vouchers sent to the IOC for payment and send only healthcare vouchers for original payments.

The IOC often "bundles" multiple interest penalty payments, up to 25, into one warrant that is supposed to be mailed to the qualified purchaser. As reported elsewhere in this audit, the interest payments are often remitted to an incorrect entity. With this bundling, qualified purchasers have no way of reconciling and understanding whether the gross amount of interest is correct because the qualified purchasers do not have visibility into the amounts or paid dates for the comingled amounts.

An email dated April 20, 2020, among CMS officials discussed how to save money by lowering the interest rate paid to qualified purchasers under the Program. One official stated, *"We are currently reviewing a programming*

change to SAP [Systems, Applications and Products] regarding the processing of interest payments and assignments to a QP instead of the vendor.”

A CMS official told auditors that CMS was considering the programming change to allow interest payments to be manually overridden, or otherwise “unbundled” from other interest payments that would assist qualified purchasers in receiving the appropriate payments.

The IOC **does not maintain statistics for how long it takes** to pay base payments or the prompt payment interest for vendors not in the Program. Therefore, we were unable to compare the Program penalty payments in our analysis to vendors that chose not to participate in the Program.

Conclusion

The State Finance Act (30 ILCS 105 (25) (b2.7)) states, *“For fiscal years 2012, 2013, 2014, 2018, 2019, 2020, and 2021, interest penalties payable under the State Prompt Payment Act associated with a voucher for which payment is issued after June 30 may be paid out of the next fiscal year's appropriation. The future year appropriation must be for the same purpose and from the same fund as the original payment. An interest penalty voucher submitted against a future year appropriation must be submitted within 60 days after the issuance of the associated voucher, except that, for fiscal year 2018 only, an interest penalty voucher submitted against a future year appropriation must be submitted within 60 days of June 5, 2019 (the effective date of Public Act 101-10). The Comptroller must issue the interest payment within 60 days after acceptance of the interest voucher.”*

The Fiscal Control and Internal Auditing Act (30 ILCS 10/3001) requires all State agencies to *“establish and maintain a system, or systems, of internal fiscal and administrative controls.”* These controls should include the **development of a plan on when to make authorized interest penalty payments under the Program.**

The IOC reported, on June 26, 2020, *“Since cash management decisions are made on a daily, if not an hourly basis, there are no given procedures that can account for the constant change of cash balances and receipts to pay for that day's obligations. Given the severity of the backlog then (and now) the IOC cannot perform in a first-in/first out manner since doing so would negatively impact payments to critical programs that are dependent of state support for their operations.”*

The longer a qualified purchaser has to wait for the interest penalty payment, the longer the State participating vendors have to wait for the remaining 10 percent of the receivable. **Smaller State vendors could possibly be counting on this 10 percent for their business existence.**

Prompt Payment Interest

RECOMMENDATION NUMBER

11

The IOC should develop a plan for when interest penalty payments should be made under the Vendor Payment Program.

IOC Response:

The IOC strongly disagrees with this finding. The Program was enacted by the General Assembly to assist vendors financially unable to wait for their delayed state payments due to the increasing backlog of unpaid bills. There is nothing in state law that requires the IOC to prioritize late interest penalty payments, including payments to QPs. The IOC cannot, and should not, be required by the Auditor General's Office to make a plan for payment of interest and follow it without any regard to daily revenues and prioritization of core state programs, debt services, and pension payments.

The IOC must triage core payments daily so they are made without additional delay. It would be irresponsible to follow a plan that, depending on the day, could put QP late payment interest payments ahead of education, human/social services, medical, or debt service payments. The IOC's current cash-management protocols include a comprehensive review of all pending daily payments and available state resources that aim to direct payments to the most essential state program recipients and to lower the amount of accruing interest penalties that taxpayers have to pay for pending bills in the system. During difficult fiscal times, the IOC needs maximum flexibility to manage the state's bill backlog so essential payments serving the most vulnerable citizens are met and are performed in the best interest of taxpayers. It is noteworthy that at the end of May 2021, all possible prompt payment vouchers that the IOC could pay were processed. The only pending amounts left unpaid were due to insufficient appropriation levels in the Group Health Insurance program for the remaining months of fiscal year 2021, making it impossible for the IOC to process these vouchers until new appropriation authority is enacted by the General Assembly. If a plan were enacted today, it would be changed tomorrow because each day has a different payment emergency presented to the IOC. Cash management during a deficit of billions of dollars cannot be reduced to a written plan to follow.

The Auditor General's Office incorrectly assumed or implied that QPs wait longer to receive their interest payments than vendors not associated with the Program. Prompt payment interest vouchers are all held together and when funding allows, payments are released.

[SEE AUDITOR COMMENT ON FOLLOWING PAGE.]

Auditor Comment #8:

The IOC misses the point of the recommendation. We did not recommend to the IOC to make qualified purchaser interest payments ahead of education, human/social services, medical, or debt service payments as suggested by the IOC.

We did recommend that the IOC develop a plan, when interest money is available, to pay qualified purchasers interest payments they are entitled to. As an example to demonstrate the need for such a plan, on the most recent monthly (April 2021) reports available on the IOC's website (as of June 15, 2021), VAP and VCF both separately reported having outstanding invoices with proper bill dates from July 2015. We continue to recommend the need for a plan, especially considering the State has failed to pay prompt payment interest on proper bills which are more than 5 years old.

Further, as stated in the audit, delays in interest payments to qualified purchases means vendors, including small State vendors, are similarly delayed in receiving the final 10 percent they are owed by the State, which they may be relying on for their existence. Reducing the burden caused by delayed payments to pay State vendors is the very reason the Program came into existence.

The IOC is incorrect that auditors assumed qualified purchasers wait longer to receive their interest payments. As stated in the report, "The IOC does not maintain statistics for how long it takes to pay base payments or the prompt payment interest for vendors not in the Program. Therefore, we were unable to compare the Program penalty payments in our analysis to vendors that chose not to participate in the Program." We were able to determine, in our sample of Program interest payments during FY19-FY20, that payments were made between 0 and 547 days from when the State agencies requested the payments.

Appendix A

Public Act 100-1089

Excerpt from the State Prompt Payment Act

30 ILCS 540/10

Sec. 10. Vendor Payment Program audit.

The Office of the Auditor General shall perform a performance audit of the Program established under Section 8. The audit shall include, but not be limited to, a review of the administration of the Program and compliance with requirements applicable to participating vendors, qualified purchasers, qualified accounts receivable, and financial backer disclosures. The audit shall cover the Program's operations for fiscal years 2019 and 2020. Upon its completion and release, the Auditor General's report shall be posted on the Internet website of the Auditor General.

(Source: P.A. 100-1089)

(Effective Date: 8/24/18)

Appendix B

Audit Scope and Methodology

This performance audit was conducted in accordance with generally accepted government auditing standards and the audit standards promulgated by the Office of the Auditor General at 74 Ill. Adm. Code 420.310. 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 found in Public Act 100-1089.

We examined the five components of internal control – control environment, risk assessment, control activities, information and communication, and monitoring – along with the underlying principles. We considered all five components to be significant to the audit objectives. Any deficiencies in internal control that were significant within the context of the audit objectives are discussed in the body of the report.

The audit objectives were delineated by Public Act 100-1089 (Act), which directed the Auditor General to conduct a performance audit of the Vendor Payment Program (Program), a program administered by the Department of Central Management Services (CMS) and the Illinois Office of the Comptroller (IOC). The Act contained several objectives for the audit (listed below):

1. review of the administration of the Program;
2. review of compliance with applicable requirements by participating vendors;
3. review of compliance with applicable requirements by qualified purchasers;
4. review of compliance with applicable requirements for qualified accounts receivable; and
5. review of compliance with applicable requirements for financial backer disclosures.

The audit timeframe was defined as FY19 and FY20 in the Act. To provide perspective, and to complete audit work on the audit objectives we needed to go back prior to FY19 since all qualified purchasers were selected prior to FY19.

In conducting the audit, we reviewed applicable federal laws, State statutes and rules. We reviewed compliance with those laws and rules to the extent necessary to meet the audit's objectives.

We requested any applicable interagency agreements and related policies and procedures. We found that CMS and the IOC have one intergovernmental agreement, dated November 2013; however, this agreement relates to the technical requirements for the assignment of vendor payments but does not address the responsibilities of each agency. Additionally, we received the Program Terms that detail requirements of State vendors and qualified purchasers

for participation in the Program as well as monitoring responsibilities of CMS and IOC. Instances of non-compliance are included in this report.

We reached out to a number of officials as part of the audit. We contacted the former CMS Director involved with the start of the Program. We also had a number of phone conferences and email correspondence with CMS and IOC officials. We also had several phone conferences and email correspondence with the participating qualified purchasers. We reached out to all five qualified purchasers involved with the Program during FY19 and FY20. Four of the five qualified purchasers agreed to participate in the audit.

We requested and reviewed the approval files for the qualified purchasers involved in Program since inception. These files included the five qualified purchasers and sub-participants that were active during the audit period, FY19 and FY20. These files also included three qualified purchasers which were approved for participation since program inception, but were not active during the audit period. Additionally, we requested the files for qualified purchasers denied to participate in the Program. We received one file for a qualified purchaser denied participation in the Program. We compared all of the files to the Checklist for Interested Qualified Purchasers developed by CMS for participation in the program. We found a number of deficiencies which can be found in the report.

We requested and reviewed the email vaults of 23 individuals from CMS. We provided 14 key word phrases for a search. This resulted in 176,956 emails matching the criteria of the search. After our review, we selected 677 pages of emails for our public work papers. The emails were used to provide context and support decisions made as part of the Program. References to such emails can be found throughout the report.

We gathered the financial backer disclosures from the IOC and CMS websites for all qualified purchasers for the initial disclosure following the effective date of the requirement as well as the disclosures required for FY19 and FY20. We tested qualified purchasers' compliance with the financial backer disclosure reporting to determine if the qualified purchasers: (1) submitted the disclosure by the due date; and (2) disclosed the information required by the Act. Issues of non-compliance can be found in the report.

We gathered and compiled each of the monthly reports submitted by the five qualified purchasers for FY19 and FY20. We summarized the data provided by each qualified purchaser to determine: (1) the total count and amount of receivables assigned to each qualified purchaser; (2) total number and amount of base invoice payments made by the State to each qualified purchaser; and (3) the total number and amount of prompt payment interest payments made by the State to each qualified purchaser. Additionally, we reviewed the monthly reports for deficiencies including missing and inconsistent data. Instances of non-compliance can be found in the report.

We used the monthly reporting summaries as the basis for determining compliance with State agencies' determination of the proper bill date and determining timeliness of qualified purchasers' initial and penalty payments to vendors having sold receivables.

We tested a random sample of receivables purchased by each of the qualified purchasers that agreed to participate in the audit to determine: (1) whether the State agencies have complied with administrative rules for determination of the proper bill date, and (2) that the billed services meet the requirements for the payment of interest through prompt pay legislation. We utilized the random sample to obtain a cross section of State agencies that utilized the Vendor Payment Program. The results of the random sample were not for the purpose of projecting results to the entire population of receivables. However, we did not discover any significant deficiencies in the testing.

We selected random samples of base invoice payments and prompt payment penalty payments reported by each of the four participating qualified purchasers from their monthly reports. We requested documentation from each of the qualified purchasers to support the dates and amounts of each of the base invoice and penalty paid dates. Using documentation provided by the qualified purchasers, we tested compliance with the required 90 percent initial payment and 10 percent final payment made by the qualified purchasers to the vendors. We also tested compliance with the required 10 days for initial payment and 5 days for final payment made by the qualified purchasers to the vendors. The random sample, by each qualified purchaser, was utilized to gain an understanding of the compliance by the qualified purchasers with payment requirements. Instances of non-compliance can be found in the report. We reported only on the sampled payments and are not projecting the sample results to the entire population of base invoice payments and prompt payment penalty payments.

Using qualified purchasers' responses to the timeliness testing, we used the same sample of penalty payments made by the State to qualified purchasers. We asked the IOC to provide the date the State agency submitted to the Comptroller the prompt payment interest voucher. Using the prompt payment penalty paid date, we calculated the number of days the IOC held the prompt payment interest voucher prior to paying the qualified purchaser.

We reached out to State vendors that participated in the Program to gain the vendor perspective on the Program to see whether improvements could be made. The vendors selected were based on information we collected from our testing of timely payments by the qualified purchasers. Overall we surveyed 29 vendors. Unfortunately, only 17 percent (5 of 29) of the vendors opted to participate in the audit. We did not discover any significant information in the survey.

Exit conferences were held with CMS and the IOC. The dates of the exit conferences, along with the principal attendees are noted below:

Exit Conference		May 13, 2021
Agency	Name and Title	
CMS	<ul style="list-style-type: none"> • Terry Glavin, General Counsel • Sean Coombe, Deputy General Counsel • Jack Rakers, Chief Internal Auditor • Marcia Armstrong, Contractual • Karen Pape, Chief Fiscal Officer • Amy Lange, Internal Audit 	
Illinois Office of the Auditor General	<ul style="list-style-type: none"> • Mike Maziarz, Senior Audit Manager • Jill Paller, Audit Manager 	

Exit Conference		May 14, 2021
Agency	Name and Title	
IOC	<ul style="list-style-type: none"> • Ellen Andres, Assistant Comptroller of Operations • Kevin Schoeben, Assistant Comptroller of Fiscal Policy • Adam Alstott, Deputy General Counsel • Kathleen Killion, Director of State Accounting • Gary Shadid, Chief Internal Auditor • Marvin Becker, Consultant 	
Illinois Office of the Auditor General	<ul style="list-style-type: none"> • Mike Maziarz, Senior Audit Manager • Jill Paller, Audit Manager 	

Appendix C

Program Terms – Vendor Payment Program

State of Illinois Vendor Payment Program

Program Terms December 13, 2012

Background:

As a result of the current cash flow deficit, the State of Illinois (the “State”) has been forced to delay payment to the majority of its vendors. Vendors range from small private contractors to larger entities such as not-for-profit groups, local school districts and public universities, the corrections system and the Regional Transportation Authority.

The State’s general process for paying vendors is as follows: In order to make a payment from an Illinois Treasury-held fund, State agencies must certify the payment’s accuracy. The agencies then must obtain the approval of the Illinois Office of the Comptroller (the “State Comptroller”) by submitting a request for payment (a “voucher”). The voucher contains information concerning the payment and has supporting documents attached. Once the State Comptroller has reviewed and approved the voucher, a State check (a “warrant”) is issued and signed by the State Comptroller and the Illinois State Treasurer. The voucher pre-audit process verifies that a voucher relates to goods or services provided by a vendor pursuant to a properly awarded contract with the State for which adequate funds were appropriated.

Because the State has not had sufficient funds available to pay its vendors, the State Comptroller has been approving vouchers without directing the Treasurer to issue a warrant to release funds for payment. As a result of the delay in payment of approved vouchers, many of the State’s vendors are experiencing significant cash flow deficits and, in some instances, implementing layoffs.

Pursuant to the Illinois’ State Prompt Payment Act (30 ILCS 540 *et seq.*) (the “Prompt Payment Act”), if a payment is not made to a vendor within 90 days of receipt of a proper invoice, an interest penalty of 1% of any unpaid amount will accrue for each month or, on a prorated basis, each fraction thereof that such payment is delayed after such 90-day period.

In an effort to counter the negative effects that State vendors are experiencing due to the delay in payment of approved vouchers and to ensure faster vendor payment, the State is implementing a program to give qualified institutions the opportunity to purchase outstanding accounts receivable directly from vendors of the State and, through the assignment of such accounts receivable by the vendors, to become creditors of the State. In furtherance of this, the State is establishing a vendor payment program on the following terms:

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I. Establishment of Program

The State is hereby establishing a vendor payment program (the “**Program**”) under which Qualified Purchasers (as defined below) may purchase from Participating Vendors (as defined below) certain Qualified Accounts Receivable (as defined below) owed by the State to the Participating Vendors. As further detailed below, subject to any State Offsets (as defined below), the Purchase Price for any Qualified Account Receivable purchased under the Program will equal one hundred percent (100%) of the Base Invoice Amount (as defined below) associated with such Account Receivable, as determined by the State Comptroller. The Purchase Price for a Qualified Account Receivable will be paid as provided below. In consideration of the payment of the Purchase Price, a Participating Vendor will assign to the Qualified Purchaser all of its rights to payment of such Qualified Account Receivable, including all current and future prompt payment penalties due relating to such Qualified Account Receivable in accordance with the Prompt Payment Act.

The following terms shall have the following meanings when used herein:

“**Account Receivable**” means an invoice (pursuant to the terms of an executed Intergovernmental Agency Agreement between CMS and the State Comptroller) or a voucher approved for payment, due and payable by the State.

“**Applicant**” is any entity seeking to be designated as a Qualified Purchaser.

“**Application Period**” means, with respect to any week in which the Program is effective, the time period when the Program is accepting applications as determined by CMS.

“**Assigned Penalty**” is a penalty payable by the State in accordance with the Prompt Payment Act and 44 Ill. Adm. Code 900 that is assigned to the Qualified Purchaser of an Assigned Receivable.

“**Assigned Receivable**” means, unless otherwise prohibited by law, the Base Invoice Amount of a Qualified Account Receivable and any associated assigned penalties due, currently and in the future, in accordance with the Prompt Payment Act. An Assigned Receivable shall be subject to an Assignment Agreement where no prior assignment of the Account Receivable is reflected in the State Comptroller’s payment system and where the Account Receivable for the Base Invoice Amount in the State Comptroller’s payment system identifies the Qualified Purchaser.

“**Assignment Agreement**” means an agreement executed by a Participating Vendor and a Qualified Purchaser pursuant to which the Participating Vendor assigns Qualified Account(s) Receivable to the Qualified Purchaser and makes certain representations and warranties in respect thereof, in the form attached hereto as Exhibit A.

“**Base Invoice Amount**” means the unpaid principal amount of the invoice associated with an Assigned Receivable.

“**CMS**” means the Department of Central Management Services.

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“Commitment Amount” means, with respect to any Qualified Purchaser, the minimum value of Qualified Accounts Receivable such Qualified Purchaser shall have committed to purchase, subject to vendor participation and adequate Qualified Accounts Receivable as set forth in the Qualified Purchaser Designation executed and delivered by such Qualified Purchaser (as amended from time to time) in accordance with the Program Terms.

“Deferred Payment” means the amount withheld (Purchase Price minus the Initial Payment) for the purpose of (i) the Qualified Purchaser’s obligation to pay the Participating Vendor and (ii) the Qualified Purchaser’s right to recover all or a portion of any State Offsets, in each case in accordance with the Program Terms.

“Deferred Payment Reserve Account” means a dedicated account to be maintained by a Qualified Purchaser solely for the purposes of securing (i) the Qualified Purchaser’s obligation to pay the Deferred Payment to a Participating Vendor and (ii) the Qualified Purchaser’s right to recover all or a portion of any State Offsets, in each case in accordance with the Program Terms.

“Full Payment” means payment in full of (i) the Base Invoice Amount associated with an Assigned Receivable and (ii) all associated Assigned Penalties due in accordance with the Prompt Payment Act.

“Initial Payment” means the first payment to the vendor after the State acknowledges the assignment pursuant to the Program, equal to 90% of the Purchase Price.

“Participating Vendor” means a vendor whose application for the sale of a Qualified Account Receivable is accepted for purchase by a Qualified Purchaser pursuant to the Program

“Purchase Price” is 100% of the Base Invoice Amount associated with an Assigned Receivable minus:

- any deductions against the Assigned Receivable arising from State Offsets; and
- if and to the extent exercised by a Qualified Purchaser, other deductions for amounts owed by the Participating Vendor to the Qualifier Purchaser for State Offsets applied against other accounts receivable assigned by the Participating Vendor to the Qualified Purchaser pursuant to the Program.

“Qualified Account Receivable” means, unless otherwise prohibited by law, an Account Receivable which (i) is eligible to accrue prompt payment penalties under the Prompt Payment Act, (ii) is not prohibited by, or otherwise prevented by, applicable law from being transferred or assigned pursuant to these Program Terms, (iii) is not an Account Receivable related to the Medical Assistance Program (including Medicaid) payments and (iv) has been verified by the State in accordance with Section II.2 below. Due to federal law prohibiting certain assignments

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of rights to receive Medicaid payments, this Program shall not apply to the purchase of any accounts receivable related to Medical Assistance Program (including Medicaid) payments.

“Qualified Purchaser” means any entity that, during any Application Period, is approved by CMS to participate in the Program on the basis of certain qualifying criteria set forth in 74 Ill. Adm. Code 900.125(f) as determined by CMS, which shall include, but are not limited to: (i) the Qualified Purchaser’s agreement to commit a minimum purchase amount as established from time to time by CMS based upon the current needs of the Program and the Qualified Purchaser’s demonstrated ability to fund its commitment; and (ii) the demonstrated ability of Qualified Purchaser’s Sub-Participant’s to fund their portions of a Qualified Purchaser’s minimum purchase commitment. The definition of “Qualified Purchaser” shall include any entity that is managed by a Qualified Purchaser, and approved by CMS, if such entity has been formed solely to purchase “Qualified Account Receivables and to perform activities directly relating thereto. In determining whether any entity seeking to be designated as a Qualified Purchaser (an **“Applicant”**) will be so designated, CMS will have the right to review and approve the identity of any individual or entity that intends to purchase Assigned Receivables by or through such Applicant (a **“Sub-Participant”**), and CMS reserves the right to reject or terminate the designation of any such Applicant as a Qualified Purchaser or require an Applicant to exclude a proposed Sub-Participant in order to become or remain a Qualified Purchaser on the basis of such review, whether prior to or after such designation. In furtherance thereof, each Applicant and each Qualified Purchaser has an affirmative obligation hereunder to promptly (and in any event no later than 3 business days thereafter) notify CMS of any change or proposed change in the identity of the Sub-Participants that it has theretofore disclosed to CMS. Each Sub-Participant will be required to execute a Sub-Participant Certification, which will be attached to the corresponding Qualified Purchaser Designation.

“Qualified Purchaser Acknowledgement” means an acknowledgement of the acceptance of a Qualified Account Receivable into the Program as an Assigned Receivable, executed and delivered by a Qualified Purchaser to a Participating Vendor in the form attached hereto as Exhibit B.

“Qualified Purchaser Designation” means an instrument executed and delivered to CMS by an Applicant pursuant to which the Applicant agrees to a Commitment Amount and to be bound by the terms and conditions of the Program as a condition to its participation in the Program as a Qualified Purchaser, in the form attached hereto as Exhibit C.

“Rollover Accounts Receivable” means any Qualified Account Receivable that is not accepted into the Program in any Application Period due to one or more Qualified Purchasers having reached their respective Commitment Amounts for such Application Period.

“State Acknowledgement” means an acknowledgement executed and delivered to a Qualified Purchaser by CMS, acknowledging the assignment of a Qualified Account Receivable by a Participating Vendor to such Qualified Purchaser, in the form attached hereto as Exhibit D or Exhibit D1.

“State Comptroller” means the Illinois Office of the Comptroller.

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“**State Offsets**” means any amount deducted from payments made by the State with respect to any Qualified Account Receivable due to the State’s exercise of any offset or other contractual rights against a Participating Vendor, including statutorily required administrative fees imposed pursuant to the State Comptroller Act [15 ILCS 405].

“**Sub-Participant**” means any individual or entity that intends to purchase Assigned Receivables, directly or indirectly, by or through an Applicant or Qualified Purchaser for the purposes of the Program (it being understood that lenders who provide financing pursuant to a credit facility described in Section II (6) shall not be considered “Sub-Participants” hereunder).

“**Sub-Participant Certification**” means an instrument executed and delivered to CMS by a Sub-Participant, in the form attached hereto as Schedule 1 to Exhibit C, pursuant to which the Sub-Participant certifies its agreement, among others, to be bound by the terms and conditions of the Program as a condition to its participation in the Program as a Sub-Participant.

“**Unsecured Shortfall**” means the aggregate amount of State Offsets deducted by the State from Full Payment that exceeds the sum of (a) the Pro Rata Reserve Amount and (b) the amount of the related Assigned Penalties.

II. Operation of Program

The Program will be administered in accordance with and subject to the following terms and conditions:

1. A vendor may submit an online application to a Qualified Purchaser for the sale of one or more Accounts Receivable. A vendor may not apply to more than one Qualified Purchaser in a given Application Period.

2. By execution and delivery of an Assignment Agreement to a Qualified Purchaser, a Participating Vendor consents to the assignment of all of its rights to payment by the State of (a) the Base Invoice Amount of each Qualified Account Receivable and (b) any associated prompt payment penalties due, currently and in the future, in accordance with the Prompt Payment Act ((a) and (b) collectively, the “Assigned Receivable”). However if at the time the assignment is executed in the State Comptroller’s payment system, an Account Receivable is found to be unassignable pursuant to these Program Terms, the Prompt Payment Act, and /or 74 Ill. Adm. Code 900, such unassignable Account Receivable shall be considered void under the Assignment Agreement but shall not otherwise impact or modify the parties’ remaining obligations with respect to any other Account Receivable under the Assignment Agreement. After the expiration of each Application Period, the Qualified Purchaser will verify with CMS that a voucher associated with the Base Invoice Amount for an Account Receivable (including any Rollover Accounts Receivable) is unpaid, subject to Prompt Payment interest, and has completed a voucher pre-audit. Verification and processing of assignments of Accounts Receivable will be subject to the operational capacity of the State Comptroller, as determined by the State Comptroller and CMS. Qualified Accounts Receivable (including any Rollover Accounts Receivable), for which an Assignment Agreement has been executed and has been

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timely submitted prior to expiration of such Application Period will be prioritized by the Qualified Purchaser in order of the earliest date on which payment of the Base Invoice Amount of the Qualified Account Receivable, respectively, was due. Upon verification by CMS, the Qualified Purchaser will submit such Qualified Accounts Receivable, in the order of such priority, for purchase pursuant to the Program, provided that such Qualified Purchaser will not be obligated to purchase additional Qualified Accounts Receivable to the extent the Qualified Purchaser has already purchased Qualified Accounts Receivable with an aggregate Base Invoice Amount in excess of such Qualified Purchaser's Commitment Amount.

A Qualified Purchaser will not have the right to reject the purchase of an Assigned Receivable unless (a) the vendor is subject to offset, but not including any administrative fees pursuant to 15 ILCS 405, (b) the Qualified Purchaser has already accepted Assigned Receivables with an aggregate Base Invoice Amount equal to or greater than its Commitment Amount and for which payment of Base Invoice Amounts were due earlier in time, (c) immediately prior to assignment, such Assigned Receivable is not free and clear of liens and encumbrances, (d) such Assigned Receivable has been assigned or otherwise transferred to another Qualified Purchaser or other person or entity as part of the Program or otherwise, or (e) such Qualified Purchaser validly rejected the purchase of such Assigned Receivable in a prior Application Period. To the extent a vendor's Rollover Accounts Receivable will be considered for participation in each next subsequent Application Period, without the requirement of a new online application by the vendor, until such time as such Rollover Accounts Receivable is accepted for purchase pursuant to the Program (it being understood that a participating vendor's initial application may be used in any subsequent Application Period so long as there has been no material change in the information provided in such application).

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3. If the Qualified Purchaser determines that an Account Receivable is not a Qualified Account Receivable or otherwise rejects the purchase of the Account Receivable as permitted by Section II.2, the Qualified Purchaser will give the vendor and CMS written notice that such receivable is not eligible for purchase under the Program and the Qualified Purchaser's reasonable basis for such determination (including any supporting documentation thereof), and the Qualified Purchaser will have no obligation to purchase such Account Receivable; provided, however, that the vendor will have the right to file a written appeal of the Qualified Purchaser's determination with CMS. Neither the failure of an Account Receivable to qualify as a Qualified Account Receivable nor the rejection of an Account Receivable for any other reason pursuant to Section II.2 will preclude a vendor from resubmitting an application for such Account Receivable under the Program during a subsequent Application Period, if that Account Receivable becomes eligible for acceptance into the Program.

4. If the Qualified Purchaser determines that such receivable is a Qualified Account Receivable, subject to the limitations set forth in Section II.2 above, the Qualified Purchaser will execute and deliver to the Participating Vendor a Qualified Purchaser Acknowledgement (or an assignment agreement or supplemental schedule of receivables either of which is in form for execution by the Qualified Purchaser and Participating Vendor) evidencing the Qualified Purchaser's acceptance of such Qualified Account Receivable into the Program as an Assigned Receivable, and the Qualified Purchaser will purchase such Assigned Receivable and pay the Purchase Price therefor on the terms set forth below.

5. An Assigned Receivable (or any interest therein) may not be subsequently assigned, sold or otherwise transferred by a Qualified Purchaser to any person or entity without the prior execution and delivery to CMS of a Qualified Purchaser Designation with respect to the subsequent assignee and a representation letter in the form attached hereto as Exhibit E, together with written notice of such subsequent assignment to CMS and the Participating Vendor who initially assigned the Assigned Receivable. No such assignment, sale or transfer may be made for the purpose of securitizing Assigned Receivables (it being understood that a credit facility described under Section II (6) will be not considered a securitization). Any purported assignment, sale or other transfer in violation of this Subsection 5 shall be deemed void *ab initio*. CMS will have the right to review and approve the identity of any assignee that intends to take assignment of Assigned Receivables by or through a Qualified Purchaser, and such assignee shall expressly assume all of the obligations of the Qualified Purchaser hereunder and under the terms of any ancillary documents executed by the Qualified Purchaser in connection with the Program.

6. Notwithstanding the foregoing provisions of Section II, if a Qualified Purchaser does not have any Sub-Participants, the Assigned Receivables may be pledged as collateral to a person or entity (who or which is not a Sub-Participant) for the purpose of securing a credit facility solely for the purpose of purchasing Qualified Accounts Receivable, and such collateralization as well as the exercise by such person or entity of its remedies with respect to the Assigned Receivables pledged to it as collateral under applicable law shall not be considered an assignment, sale or transfer necessitating the prior execution and delivery to the State of a Qualified Purchaser Designation with respect to such person or entity. In the event of such

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collateralization, the rights of any lender under a credit facility shall be subordinate to the rights of the Participating Vendor, as those rights are set out in the Program Terms.

7. If a Qualified Purchaser has complied with the terms of the Program, as well as the terms of any Assignment Agreement between a Qualified Purchaser and a Participating Vendor, such Participating Vendor will be prohibited from assigning any of its Qualified Account Receivables to any other Qualified Purchaser under this Program, other than its existing Qualified Purchaser or an entity managed or affiliated with such existing Qualified Purchaser, unless the Qualified Purchaser with which the Participating Vendor previously contracted is temporarily or permanently not participating in the Program.

III. Payment of Purchase Price; Deferred Payment Reserve Account

The Purchase Price for each Assigned Receivable will equal one hundred percent (100%) of the Base Invoice Amount associated with such Assigned Receivable (subject to any deductions arising from State Offsets) and will be paid as follows:

1. Within 10 days after a Qualified Purchaser receives a State Acknowledgement of a Qualified Account Receivable being assigned pursuant to the Program, the Qualified Purchaser will: (i) (A) if section III.6 does not apply deposit the Deferred Payment into the Deferred Payment Reserve Account maintained by such Qualified Purchaser or (B) if Section III.6 does apply, retain the Deferred Payment to be later distributed in accordance with Section III.7 and (ii) pay the Initial Payment. The Initial Payment shall be made in immediately available U.S. funds by check, ACH or wire transfer, in accordance with the instructions of the Participating Vendor.

Subject to the Program Terms set forth below, the Deferred Payment Reserve Account will be maintained and controlled by the Qualified Purchaser at its sole cost and at no cost (whether in the form of fees or otherwise) to the Participating Vendors. The Qualified Purchaser shall not deposit funds into or release or withdraw funds from the Deferred Payment Reserve Account except as provided pursuant to the Program Terms. The Deferred Payment Reserve Account will be maintained as a non-interest-bearing account. The Qualified Purchaser will track and maintain an ongoing accounting of the funds in the Deferred Payment Reserve Account, identifying the dollar amount of funds attributable to the balance of the Deferred Payment due to the Participating Vendor for each Assigned Receivable purchased by the Qualified Purchaser (the "Pro Rata Reserve Amount"), as well as the Participating Vendor associated with such Assigned Receivable. The Qualified Purchaser shall promptly furnish a copy of such accounting to the State Comptroller and CMS on a monthly basis, no later than 30 days after the end of each month, and otherwise upon request of the State Comptroller or CMS from time to time.

2. Subject to subsections III.3 and III.4 below, within 10 days after a Qualified Purchaser's receipt of amounts due from the State with respect to the Base Invoice Amount for any Assigned Receivable, the Qualified Purchaser will deliver written notice to the relevant State agency, in a form provided by the State, setting out the Qualified Purchaser's estimate of the amount of the Assigned Penalty due from the State with respect to such Assigned Receivable and requesting such State agency to confirm the amount of the Assigned Penalty. The relevant

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State agency shall notify the Qualified Purchaser in writing of the actual amount of the Assigned Penalty.

3. Except if Section III.6 applies, within 5 days after the Qualified Purchaser has received such written notice from the relevant State agency of the actual amount of the Assigned Penalty, the Qualified Purchaser will release the following amounts from the Deferred Payment Reserve Account:

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(a) to the Qualified Purchaser, an amount equal to the sum of such Assigned Penalty plus the amount, if any, of State Offsets charged against payment of the Base Invoice Amount, provided that in no event shall such amount exceed the Pro Rata Reserve Amount(s) attributable to the Participating Vendor's Assigned Receivable(s); and

(b) to the Participating Vendor, an amount equal to the balance of the Pro Rata Reserve Amount (if any) remaining in the Deferred Payment Reserve Account after the disbursement of funds contemplated by subsection III.3(a), as partial payment of the Deferred Payment due and owing to the Participating Vendor from the Qualified Purchaser.

Payment of such amounts shall be made in immediately available U.S. funds by check, ACH or wire transfer in accordance with the instructions of the Participating Vendor.

4. Within 5 days after a Qualified Purchaser's receipt of Full Payment, including the Assigned Penalty, of an Assigned Receivable (less any State Offsets), the Qualified Purchaser will notify the Participating Vendor in writing of such payment and will pay to the Participating Vendor an amount equal to the Deferred Payment, less (a) the amount paid to the Participating Vendor pursuant to Section III.3(b) and, (b) any additional State Offsets (without duplication) charged against such Full Payment for that or any other Assigned Receivable purchased by the Qualified Purchaser. Such amount shall be paid by the Qualified Purchaser out of immediately available funds of the Qualified Purchaser and not out of the Deferred Payment Reserve Account.

5. If the aggregate amount of State Offsets, if any, deducted by the State from Full Payment exceeds the sum of (a) the Pro Rata Reserve Amount in the Deferred Payment Reserve Account and (b) the amount of the related Assigned Penalties (the excess amount being the "Unsecured Shortfall"), the Qualified Purchaser may, in its discretion and at its sole cost and obligation, seek the Unsecured Shortfall directly from the Participating Vendor. The Qualified Purchaser may recoup any Unsecured Shortfall by purchasing future Qualified Account(s) Receivable at the Base Invoice Amount minus the amount of the Unsecured Shortfall(s) owed to the Qualified Purchaser by the Participating Vendor. The Qualified Purchaser may only purchase a Qualified Account(s) Receivable at a price other than the Base Invoice Amount in order to recover Unsecured Shortfalls due to State Offsets losses incurred through the Vendor Payment Program. The Qualified Purchaser's sole recourse with respect to any Unsecured Shortfall will be against the Participating Vendor. Under no circumstances will the Qualified Purchaser have any recourse against the State with respect to the recovery of any Unsecured Shortfall.

6. Notwithstanding the foregoing provisions of Section III, if a Qualified Purchaser: (a) does not have any Sub-Participants; (b) establishes a bankruptcy remote trust, the terms of which are acceptable to CMS in its sole discretion; and (c) CMS determines to its satisfaction that such Qualified Purchaser can at all times track, account for and identify the Deferred Payments and the outstanding balance thereof to demonstrate that all Deferred Payment monies owed to a Participating Vendor have either not yet been released by the State to the Qualified Purchaser or are maintained on account by the Qualified Purchaser, then such Qualified Purchaser need

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not maintain Deferred Payment Reserve Accounts or segregate the Deferred Payments or the Pro Rata Reserve Amounts from the Initial Payments.

7. (a) If a Qualified Purchaser purchases Qualified Accounts Receivable pursuant to Section III.6, upon receipt of payment from the State of the Base Invoice Amount with respect to a Qualified Assigned Receivable, such Qualified Purchaser will send a notification to the applicable Participating Vendor and the applicable State agency (on a form to be provided by the State) which notice will set forth (i) the proper bill date, (ii) the ending voucher date, and (iii) the estimated Assigned Penalty that is due with respect to the applicable Qualified Account Receivable and such Qualified Purchaser shall comply with Sections III.7 (b) or (c), below, as applicable.

(b) If a Qualified Purchaser is able to demonstrate to CMS that such Qualified Purchaser can accurately estimate the Assigned Penalty amount, then such Qualified Purchaser, upon receipt of the Base Invoice Amount with respect to an Assigned Receivable may (i) retain an amount equal to the Initial Payment for such Assigned Receivable plus the estimated Assigned Penalty from such Base Invoice Amount and (ii) forward any remaining amount available to the Participating Vendor as a partial payment of Deferred Payment due and owing to the Participating Vendor from such Qualified Purchaser; provided, that, upon its receipt of the actual Assigned Penalty from the State of Illinois, such Qualified Purchaser shall reconcile any discrepancy between its estimate and the amount actually received (it being understood that such Participating Vendor is entitled to receive 100% of the Base Invoice Amount (after adjusting for any State Offsets)). If such reconciliation reveals that the Participating Vendor is entitled to receive any additional payment, such Qualified Purchaser shall make any such payment within ten (10) business days of the reconciliation.

(c) If a Qualified Purchaser cannot demonstrate to CMS that such Qualified Purchaser can accurately estimate the Assigned Penalty amount, then such Qualified Purchaser, upon receipt of the Base Invoice Amount with respect to a Qualified Assigned Receivable, will request the relevant State agency to confirm the amount of estimate set forth in such notice before retaining any amounts from the Base Invoice Amount with respect to any Assigned Receivable. The relevant State agency shall notify such Qualified Purchaser in writing (including via e-mail or other form of electronic communication) of the actual amount of the Assigned Penalty. Within five (5) days after the Qualified Purchaser has received such written notice from the relevant State agency of the actual amount of the Assigned Penalty, the Qualified Purchaser will (i) retain an amount equal to the Initial Payment for such Assigned Receivable plus the actual Assigned Penalty from such Base Invoice Amount and (ii) forward any remaining amount available to the Participating Vendor as a partial payment of Deferred Payment due and owing to the Participating Vendor from such Qualified Purchaser.

IV. Other Obligations of Qualified Purchasers and Sub-Participants

Each Qualified Purchaser will, at its sole cost and expense:

These Program Terms do not constitute a commitment by, or a contractual obligation of the State of Illinois. These Program Terms are not intended to be exhaustive or all-inclusive, and the terms and conditions of the Program may, from time to time, be amended by the State of Illinois in its discretion. These Program Terms are to be construed in accordance with applicable law. In the event of any conflict between the terms hereof and applicable law, applicable law shall control.

- (a) administer and facilitate the operation of the Program with respect to that Qualified Purchaser, including without limitation, assisting potential Participating Vendors with the application and assignment process;
- (b) establish a website that is determined by CMS to be sufficient to administer the Program in accordance with the terms and conditions of the Program;
- (c) market the Program to potential Participating Vendors;
- (d) educate Participating Vendors about the benefits and risks associated with participation in the Program;
- (e) deposit funds into, release funds from, and otherwise maintain all required accounts in accordance with the Program Terms and at no cost, whether in the form of fees or otherwise, to Participating Vendors;
- (f) submit a monthly written report (in both hard copy and Excel format) to the State Comptroller and CMS, within 10 days after the end of each month, which at a minimum shall contain:
 - (i) a listing of each Assigned Receivable purchased by such Qualified Purchaser during such month, specifying the Base Invoice Amount and invoice date of such Assigned Receivable and the name of the Participating Vendor, State contract number, Voucher number and State agency associated with such Assigned Receivable;
 - (ii) a listing of each Assigned Receivable with respect to which the Qualified Purchaser has received payment of the Base Invoice Amount from the State during such month, including the amount of and date on which such payment was made and the name of the Participating Vendor, State contract number, Voucher number and State agency associated with such Assigned Receivable, and identifying the relevant Application Period for each such Assigned Receivable;
 - (iii) a listing of any Assigned Penalties received from the State during such month, including the amount of and date on which such payment was made, the name of the Participating Vendor, the Voucher number for the Assigned Penalty receivable, and the associated Assigned Receivable, including the State contract number, Voucher number and State agency associated with such Assigned Receivable, and identifying the relevant Application Period for each such Assigned Receivable;
 - (iv) the aggregate number and dollar value of Assigned Receivables purchased by such Qualified Purchaser from the date on which such

These Program Terms do not constitute a commitment by, or a contractual obligation of the State of Illinois. These Program Terms are not intended to be exhaustive or all-inclusive, and the terms and conditions of the Program may, from time to time, be amended by the State of Illinois in its discretion. These Program Terms are to be construed in accordance with applicable law. In the event of any conflict between the terms hereof and applicable law, applicable law shall control.

Qualified Purchaser commenced participating in the Program through the last day of the month;

- (v) the aggregate number and dollar value of Assigned Receivables purchased by the Qualified Purchaser for which no payment by the State of the Base Invoice Amount has yet been received, from the date on which the Qualified Purchaser commenced participating in the Program through the last day of the month; and
 - (vi) such other data as the State Comptroller and CMS may reasonably request from time to time.
- (g) use its reasonable best efforts to diligently pursue receipt of Assigned Penalties associated with the Assigned Receivables, including, without limitation, by promptly notifying the relevant State agency that an Assigned Penalty is due, in accordance with subsection III.2 and, if necessary, seeking payment of Assigned Penalties through the Illinois Court of Claims; and
- (h) use its reasonable best efforts to implement the Program Terms as set forth herein and to perform its obligations under the Program in a timely fashion.

Each Qualified Purchaser's performance and implementation of its obligations in this Section IV shall be subject to review by CMS at any time to confirm that such Qualified Purchaser is undertaking such obligations in a manner consistent with the terms and conditions of the Program. A Qualified Purchaser's failure to so perform its obligations, including without limitation its obligations to diligently pursue receipt of Assigned Penalties associated with Assigned Receivables, will be grounds for CMS to terminate the Qualified Purchaser's participation in the Program in accordance with Section VI herein and 74 Ill. Adm. Code 900.125(i). Any such termination will be without prejudice to any rights a Participating Vendor may have against that Qualified Purchaser, in law or in equity, including without limitation the right to enforce the terms of the Assignment Agreement and of the Program against the Qualified Purchaser.

Each Sub-Participant shall cause the relevant Qualified Purchaser to use such Qualified Purchaser's reasonable best efforts to diligently pursue receipt of Assigned Penalties associated with Assigned Receivables as required in this Section, and use its reasonable best efforts to implement the terms of the Program and to perform its obligations under the Program in a timely fashion.

V. Adopted Amendments

In furtherance of effectuating the Program, the State Comptroller and CMS (a) have adopted certain joint administrative rules to be found at 74 Ill. Adm. Code 900.120(m) & 125, permitting the assignment of rights, under any vendor payment program approved by CMS and the State Comptroller, to receive payment of Accounts Receivable and qualifying an assignee to receive any associated Assigned Penalties under the Prompt Payment Act.

These Program Terms do not constitute a commitment by, or a contractual obligation of the State of Illinois. These Program Terms are not intended to be exhaustive or all-inclusive, and the terms and conditions of the Program may, from time to time, be amended by the State of Illinois in its discretion. These Program Terms are to be construed in accordance with applicable law. In the event of any conflict between the terms hereof and applicable law, applicable law shall control.

VI. Term and Termination

The Program commenced in March 2011 and will continue until terminated in accordance with 74 Ill. Adm. Code 900.125(i) and Section VI herein. The Program may be terminated:

- (a) by the State Comptroller, after consulting with CMS, by giving 10 days prior written notice to CMS and the Qualified Purchasers in the Program;
- (b) by CMS, after consulting with the State Comptroller, by giving 10 days prior written notice to the State Comptroller and the Qualified Purchasers in the Program;

In the event a Qualified Purchaser or Sub-Participant breaches or fails to meet any of the terms or conditions of the Program, that Qualified Purchaser or Sub-Participant may be terminated from the Program

- (a) by the State Comptroller, after consulting with the CMS. The termination shall be effective immediately upon the State Comptroller giving written notice to CMS and the Qualified Purchaser or Sub-Participant; or
- (b) by the CMS, after consulting with the State Comptroller. The termination shall be effective immediately upon CMS giving written notice to the State Comptroller and the Qualified Purchaser or Sub-Participant.

A Qualified Purchaser or Sub-Participant may terminate its participation in the Program, solely with respect to its own participation in the Program, in the event of any change to the Prompt Payment Act or to the administrative rules effectuating the Prompt Payment Act from the form that existed on the date the Qualified Purchaser, or Sub-Participant, as applicable, submitted the necessary documentation for admission into the Program if the change materially and adversely affects the Qualified Purchaser's or Sub-Participant's ability to purchase and receive payment on receivables on the terms described herein; provided, however, that no termination under this section shall alter or affect a Qualified Purchaser's or Sub-Participant's obligations with respect to Assigned Receivables purchased by or through such Qualified Purchaser prior to such termination. Without limiting the foregoing, the State may, in its discretion, elect to suspend one or more Application Periods for such duration as the State may determine by giving prior written notice thereof to Qualified Purchasers then participating in the Program.

Notwithstanding anything to the contrary contained in these Program terms, the State hereby reserves the right to amend or modify the Program terms and/or administrative rules effectuating the Prompt Payment Act from time to time in its discretion. In the event of any such amendment or modification, the State will give prior written notice thereof to Qualified Purchasers then participating in the Program, provided that no such amendment or modification shall alter or affect a Qualified Purchaser's or Sub-Participant's rights or obligations with respect to Assigned Receivables purchased by or through such Qualified Purchaser prior to such amendment or modification.

These Program Terms do not constitute a commitment by, or a contractual obligation of the State of Illinois. These Program Terms are not intended to be exhaustive or all-inclusive, and the terms and conditions of the Program may, from time to time, be amended by the State of Illinois in its discretion. These Program Terms are to be construed in accordance with applicable law. In the event of any conflict between the terms hereof and applicable law, applicable law shall control.

Exhibit A**ASSIGNMENT AGREEMENT**

Assignment Agreement (the “**Agreement**”), dated _____, 2013, by and between the undersigned Participating Vendor (the “**Assignor**” or “**Vendor**”) and the undersigned Qualified Purchaser (the “**Assignee**” or “**Purchaser**”), a [_____] with a FEIN # of [_____].

I. This Agreement is being executed and delivered by Vendor and Purchaser pursuant to the State of Illinois’ Vendor Payment Program’s “Program Terms,” effective as of December 13, 2012, in the form attached hereto as **Exhibit A** (the “**Program Terms**”), and is subject to the terms and conditions thereof, which are hereby incorporated by reference in their entirety. Capitalized terms used but not defined herein have the meanings ascribed to them in the Program Terms. In the event of any inconsistency between the Program Terms and this Agreement, the Program Terms will prevail.

II. Assignor hereby irrevocably assigns, transfers, and delivers all of Vendor’s right, title and interest to receive sums due or which shall become due and owing to Vendor, including without limitation any prompt payment interest penalty amount accruing under the State Prompt Payment Act (30 ILCS 540 et seq.) based on the account(s) receivable set forth on **Schedule 1** hereto (each, an “**Assigned Receivable**” and, collectively, the “**Assigned Receivables**”). Purchaser hereby acknowledges and accepts Vendor’s assignment of, and assumes from Vendor, each Assigned Receivable, and Purchaser agrees to perform promptly and in good faith its obligations under this Agreement with respect to each such Assigned Receivable, including, without limitation, payment of the Base Invoice Amount to Vendor and collection of the Prompt Payment Penalty as set forth in this Agreement and in accordance with the Program Terms. Vendor hereby acknowledges the right and duty of the Purchaser, as purchaser of each Assigned Receivable, to take such steps as Purchaser deems necessary and as required by the Program Terms to collect from the State amounts due with respect to such Assigned Receivable (subject to State Offsets), including seeking payment through the State’s Court of Claims.

III. Vendor represents and warrants to Purchaser that:

1. Vendor has good title and authority to assign each Assigned Receivable to Purchaser, free and clear of any material liens and encumbrances, including any tax or judicalliens, and that assignment of each Assigned Receivable is not prohibited by, or otherwise prevented by applicable law from being transferred in accordance herewith;
2. The assignment of each Assigned Receivable hereunder is not subject to or conditioned upon Bankruptcy Court approval pursuant to applicable provisions of the United States Bankruptcy Code;
3. **To Vendor’s knowledge, as of the date hereof, Vendor does not owe any monies to the State thereby entitling the State to any offsets against the Assigned Receivable; and**

Exhibit A

4. Each Assigned Receivable does not constitute a right to payment under the Medical Assistance Program (including Medicaid). Any purported assignment of any such right to payment under the Medical Assistance Program (including Medicaid) hereby shall be deemed void *ab initio*. This Assignment shall not be construed as a release of claims or waiver of any defenses against Vendor which the State may assert against Vendor or Purchaser.

IV. With respect to each Assigned Receivable, in consideration of Vendor's assignment of such Assigned Receivable to Purchaser hereunder, in accordance with the Program Terms, and subject to any State Offsets, Purchaser will pay to Vendor one hundred percent (100%) of the unpaid principal amount of the invoice associated with such Assigned Receivable (the "**Base Invoice Amount**"), to be delivered as follows:

1. (a) Within 10 days after the date the Purchaser receives a State Acknowledgement for the Assigned Receivable it has accepted hereunder, Purchaser (i) will pay ninety percent (90%) of the Base Invoice Amount directly to Vendor (the "**Initial Payment**"), and (ii) will deposit ten percent (10%) of the Base Invoice Amount (the "**Deferred Payment**") into a Deferred Payment Reserve Account maintained by the Purchaser in accordance with the Program Terms. The Initial Payment shall be made in immediately available U.S. funds by check or wire transfer, in accordance with the instructions of the Vendor.

(b) Subject to the Program Terms, the Deferred Payment Reserve Account will be maintained and controlled by Purchaser at its sole cost and at no cost (whether in the form of fees or otherwise) to Vendor. Purchaser shall not deposit funds into or release or withdraw funds from the Deferred Payment Reserve Account except as provided in the Program Terms. The Deferred Payment Reserve Account will be maintained as a non-interest-bearing account. Purchaser will track and maintain an ongoing accounting of the funds in the Deferred Payment Reserve Account, identifying the dollar amount of funds attributable to the Deferred Payment for the Assigned Receivable (the "**Pro Rata Reserve Amount**"). Purchaser shall promptly furnish a copy of such accounting to the State Comptroller and the State's Department of Central Management Services ("**CMS**") on a monthly basis, no later than 30 days after the end of each month, and otherwise, upon the request of the State Comptroller or CMS from time to time.
2. Subject to subsections 3 and 4, below, within 10 days after Purchaser's receipt of the amount due from the State in respect of the Base Invoice Amount, Purchaser will deliver written notice to the relevant State agency, in a form provided by the State, setting out the Purchaser's estimate of the amount of the prompt payment penalty due from the State with respect to the Assigned Receivable (the "**Prompt Payment Penalty**") and requesting such State agency to confirm the amount of the Prompt Payment Penalty and submit a Voucher for the Prompt Payment Penalty to the State Comptroller. The relevant State agency shall notify the

Exhibit A

Purchaser in writing of the actual amount of the Prompt Payment Penalty and the date on which such State agency submitted a Voucher to the State Comptroller for the Prompt Payment Penalty.

3. Within 5 days after Purchaser has received such notice from the relevant State agency of the actual amount of the Prompt Payment Penalty and the date on which a Voucher for the Prompt Payment Penalty was submitted to the State Comptroller, Purchaser will release the following amounts from the Deferred Payment Reserve Account:
 - (a) to Purchaser, an amount equal to the sum of the Prompt Payment Penalty plus the amount, if any, of State Offsets charged against payment of the Base Invoice Amount, provided that in no event shall such amount exceed the Pro Rata Reserve Amount attributable to the Assigned Receivable; and
 - (b) to Vendor, an amount equal to the balance of the Pro Rata Reserve Amount (if any) remaining in the Deferred Payment Reserve Account after the disbursement of the funds contemplated by subsection 3(a) above, as partial payment of the Deferred Payment due and owing to Vendor from Purchaser.

Payment of the foregoing amounts shall be made in immediately available U.S. funds by check or wire transfer in accordance with the instructions of the Vendor. Vendor shall concurrently deliver to Purchaser written evidence of the relevant State agency's submission to the State Comptroller of a Voucher for such Prompt Payment Penalty.

4. Within 5 days after Purchaser's receipt of the Base Invoice Amount and the Prompt Payment Penalty associated with the Assigned Receivable (less any State Offsets) (the Base Invoice Amount and the Prompt Payment Penalty, less any State Offsets, collectively, the "**Full Payment**"), Purchaser will notify Vendor in writing of such payment and will pay to Vendor an amount equal to (a) the Deferred Payment, less (b) the amount paid to Vendor pursuant to subsection 3(b) hereof, less (c) any additional State Offsets charged against such Full Payment (without duplication of any previous State Offsets deducted pursuant to subsection 3(a) hereof). Such amount shall be paid by Purchaser in immediately available U.S. funds by check or wire transfer, in accordance with the instructions of the Vendor, out of Purchaser's own account and not out of the Deferred Payment Reserve Account.
5. If the aggregate amount of State Offsets attributable to the Assigned Receivable, if any, deducted by the State from the Full Payment exceeds the sum of (a) the Pro Rata Reserve Amount in the Deferred Payment Reserve Account and (b) the amount of the Prompt Payment Penalty (the excess amount being the "**Unsecured Shortfall**"), Purchaser may, in its discretion and at its sole cost and obligation, seek the Unsecured Shortfall directly from Vendor. Purchaser's sole recourse in respect of any Unsecured Shortfall will be against Vendor. Vendor, in its sole

Exhibit A

discretion, may agree by express written consent to permit Purchaser to recover any Unsecured Shortfall by offset against amounts otherwise owed by Purchaser to Vendor in respect of any other account(s) receivable assigned by Vendor to Purchaser pursuant to the Program. Purchaser acknowledges and agrees that under no circumstances will Purchaser have any recourse against the State with respect to the recovery of all or any portion of any Unsecured Shortfall.

- V. From and after the effective date hereof, Vendor hereby agrees to pay to Purchaser all amounts Purchaser may receive from the State on account of the Assigned Receivable(s).
- VI. The Assigned Receivable(s) (or any interest therein) may not be assigned, sold or otherwise transferred by Purchaser to any other person or entity without the prior execution and delivery to the State of a Qualified Purchaser Designation with respect to the subsequent assignee and a representation letter in the form attached to the Program Terms as Exhibit E, together with written notice of such subsequent assignment to the State Comptroller, CMS and the Vendor. No such assignment, sale or transfer may be made for the purpose of securitizing Assigned Receivables. Any purported assignment, sale or other transfer in violation of this Agreement or the Program Terms shall be deemed void *ab initio*. The State will have the right to review and approve the identity of any assignee that intends to take assignment of the Assigned Receivable(s), and such assignee shall expressly assume all of the obligations of the Purchaser hereunder and under the terms of any ancillary documents executed by the Purchaser in connection with the Program.
- VII. Each of Vendor and Purchaser shall retain all of its respective rights and remedies at law and in equity that may arise as a result of a failure by the other party to perform its duties or obligations in accordance with the provisions of this Agreement and the Program Terms.
- VIII. Vendor and Purchaser have structured the transactions contemplated by this Agreement as a sale and intend the transfer and conveyance of the Assigned Receivable(s) hereunder to be an absolute and irrevocable true sale by Vendor to Purchaser that provides Purchaser with the full benefits and burdens of ownership of the Assigned Receivable(s). Neither Vendor nor Purchaser intends the transactions contemplated hereunder to be a loan from Purchaser to Vendor. If, notwithstanding the stated intention of Vendor and Purchaser, the transfer and conveyance of any Assigned Receivable herein is determined by a court of competent jurisdiction to be a secured loan and not a sale, then, in such event, this Agreement shall constitute a security agreement under the Uniform Commercial Code and other applicable law with respect to such Assigned Receivable. For this purpose only, Vendor hereby grants Purchaser a perfected, first priority security interest in all of Vendor's right, title and interest in, to and under such Assigned Receivable and the proceeds thereof to secure the repayment of the Full Payment amount. In the event this Agreement shall have been characterized as a security agreement, Purchaser shall have, with respect to such Assigned Receivable, in addition to the rights and remedies which it may have under this Agreement, all the rights and remedies provided to a secured creditor under the Uniform Commercial Code and other applicable law, which rights and remedies shall be cumulative.

Exhibit A

IX. The provisions of this Agreement may from time to time be amended, modified or waived, if such amendment, modification or waiver is in writing and signed by Vendor, Purchaser and CMS.

X. All communications or notices required under this Agreement shall be in writing and shall be delivered to Vendor and Purchaser at their respective addresses set forth on the signature page to this Agreement, with a copy to the Illinois Department of Central Management Services, attention: General Counsel.

XI. This Agreement shall be interpreted in accordance with and governed by the laws of the State of Illinois without giving effect to conflicts of law principles that would cause the application of the law of any jurisdiction other than the laws of the State of Illinois.

NOTICE TO VENDOR: AS PROVIDED ABOVE AND IN THE PROGRAM TERMS, VENDOR (AS ASSIGNOR) WILL RECEIVE 90% OF THE BASE INVOICE AMOUNT WITHIN 10 DAYS AFTER PURCHASER (AS ASSIGNEE) RECEIVES A STATE ACKNOWLEDGEMENT WITH RESPECT TO AN ASSIGNED RECEIVABLE. VENDOR, HOWEVER, WILL RECEIVE THE REMAINING 10% OF THE BASE INVOICE AMOUNT (SUBJECT TO ANY STATE OFFSETS) ONLY AFTER PURCHASER HAS RECEIVED FULL PAYMENT FROM THE STATE WITH RESPECT TO THE ASSIGNED RECEIVABLE, INCLUDING PAYMENT BY THE STATE OF THE PROMPT PAYMENT PENALTY AMOUNT (SUBJECT TO ANY STATE OFFSETS). THERE IS NO DATE CERTAIN ON OR BY WHICH FULL PAYMENT BY THE STATE WILL BE MADE AND, AS A CONSEQUENCE, ON OR BY WHICH VENDOR WILL RECEIVE THE REMAINING 10% OF THE BASE INVOICE AMOUNT (SUBJECT TO ANY STATE OFFSETS).

IN ADDITION, THE STATE MAY IDENTIFY ALTERNATIVE SOURCES OF PAYMENT OF OUTSTANDING VOUCHERS FOR ASSIGNED RECEIVABLES, INCLUDING WITHOUT LIMITATION THROUGH ONE OR MORE BORROWINGS EFFECTED BY THE STATE, THAT WOULD ALLOW THE STATE TO MAKE FULL PAYMENT (SUBJECT TO ANY STATE OFFSETS) ON THE ASSIGNED RECEIVABLE AT ANY TIME, INCLUDING IMMEDIATELY AFTER THE EFFECTIVE DATE OF THE ASSIGNMENT OF THE ASSIGNED RECEIVABLE HEREUNDER. THE STATE, HOWEVER, CAN GIVE NO ASSURANCE AS TO THE AVAILABILITY OR TIMING OF SUCH SOURCES OF PAYMENT, WHICH COULD REQUIRE LEGISLATIVE ACTION BY THE STATE'S GENERAL ASSEMBLY AND THE SIGNATURE OF THE GOVERNOR.

[Remainder of page intentionally left blank.]

Exhibit A

IN WITNESS WHEREOF, Purchaser and Vendor have caused this Assignment Agreement to be executed by their duly authorized representatives as of the date set forth above.

ASSIGNEE/PURCHASER:

[_____]
By: _____
Name:
Title:
Address:
Date:

ASSIGNOR/VENDOR:

[_____]
By: _____
Name:
Title:
Address:
Date:

Exhibit A

Schedule 1

Assigned Receivable(s)

Vendor	Voucher Number	Contract Number	Contract Date	Base Invoice Amount (\$)	Contracting Agency

EXHIBIT B

[PARTICIPATING VENDOR]

Re: **ACKNOWLEDGEMENT OF RECEIVABLE**

Ladies and Gentlemen:

[NAME OF PURCHASER] (the "Qualified Purchaser") hereby acknowledges the acceptance of the below listed accounts receivable into the State of Illinois Vendor Payment Program as "Qualified Accounts Receivable" as that term is defined in the Program Terms dated March [], 2011. The Qualified Purchaser further acknowledges its desire and intent to take assignment of the below listed Qualified Accounts Receivable pursuant to an Assignment Agreement substantially in the form attached hereto as Exhibit A.

<u>Vendor</u>	<u>Contract Number</u>	<u>Contract Date</u>	<u>Contracting Agency</u>	<u>Voucher Number</u>	<u>Base Invoice Amount (\$)</u>

[QUALIFIED PURCHASER]

By: _____
 Name:
 Title:

EXHIBIT B

EXHIBIT A

(Form of Assignment Agreement)

EXHIBIT C**QUALIFIED PURCHASER DESIGNATION**

WHEREAS, an effort to counter the negative effects that vendors of the State of Illinois (the “**State**”) are experiencing due to the delay in payment of accounts payable owed by the State to such vendors, the State is implementing a program whereby qualified purchasers will have the opportunity to purchase outstanding accounts receivable directly from qualified vendors and, through the assignment of such accounts receivable by the vendors, become creditors of the State. In furtherance of this goal, the State is establishing the Vendor Payment Program (the “**Program**”) on the terms set forth in the attached Exhibit A (the “**Program Terms**”).

WHEREAS, [PURCHASER] (“**Qualified Purchaser**”) has indicated its interest in participating in the Program as a “Qualified Purchaser” on the terms set forth in the Program Terms.

NOW THEREFORE, in order to participate in the Program, Qualified Purchaser hereby agrees to adhere to the terms and conditions set forth below and in the attached Program Terms:

I. Definitions

Capitalized terms used but not defined herein have the meanings ascribed to them in the Program Terms.

II. Designation as Qualified Purchaser

Effective as of the date hereof, Qualified Purchaser hereby agrees to act as a Qualified Purchaser under the Program and to commit to the purchase of Qualified Accounts Receivable with an aggregate value of a minimum of \$[] (the “Commitment Amount”). Qualified Purchaser shall have all the rights and to perform and be bound by all the obligations of a Qualified Purchaser thereunder, all on the terms and conditions set forth in the Program Terms.

III. Participation of Sub-Participant

To the extent that Assigned Receivables will be purchased through Qualified Purchaser by one or more Sub-Participants, prior to any such purchase, each such Sub-Participant shall have executed and delivered to the State a Sub-Participant Certification, which Certification(s) shall be attached hereto as Schedule 1 and expressly incorporated herein by reference.

Miscellaneous**A. Representations.** Qualified Purchaser represents and warrants that:

- (1) It has all requisite authority to agree to the Program Terms and to this Qualified Purchaser Designation (the “**Designation**”), to enter into the Program and to perform all obligations required to be performed by it as a Qualified Purchaser under the Program Terms, and that the execution and delivery of this Designation by Qualified Purchaser does not, and the performance of its obligations under this Designation and the Program will

EXHIBIT C

not, conflict with any provision of any law, regulation or administrative rule, or any agreement or court or administrative order or decree binding upon Qualified Purchaser.

- (2) In the event that any assignment of a Qualified Account Receivable to Qualified Purchaser pursuant to the Program is considered to be a sale of a security under the Securities Act of 1933 (the “Act”), Qualified Purchaser is a “qualified institutional buyer” as defined under Rule 144A promulgated under the Act.
- (3) In the event that any assignment of a Qualified Account Receivable to Qualified Purchaser pursuant to the Program is considered to be a sale of a security under the Securities Act of 1933 (the “Act”), Qualified Purchaser understands that the Qualified Account Receivable would constitute an exempted security under the Act and that registration is not legally required as of the date hereof and further understands that the Qualified Accounts Receivable (a) are not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, and (c) may not be readily marketable and are subject to certain restrictions on transfer, all of which may require Qualified Purchaser to hold the Qualified Account Receivable for an indefinite period of time.
- (4) Qualified Purchaser understands that (a) the Qualified Accounts Receivable are not secured by any pledge of any moneys received or to be received from taxation by the State of Illinois or any political division thereof, and (b) the Qualified Account Receivables do not represent a pledge of the faith and credit of the State or any political subdivision thereof.
- (5) Qualified Purchaser acknowledges that it has either been supplied with or has been given access to information to which a reasonable investor would attach significance in making investment decisions, and Qualified Purchaser has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Program and Qualified Accounts Receivable. Qualified Purchaser acknowledges that it has not relied upon, and will not rely upon, the State or any Participating Vendor for any information in connection with the Qualified Purchaser’s purchase of any Qualified Accounts Receivable and that it has the requisite knowledge and experience to evaluate the risks associated with the purchase of a Qualified Account Receivable and has consulted with its own legal and financial advisors with respect thereto.

B. Entirety of Agreement. The terms set forth herein, the Program Terms and any applicable Assignment Agreement shall embody the entire understanding by Qualified Purchaser of the subject matter hereof and thereof and supersede all prior commitments, agreements,

EXHIBIT C

representations and understandings, whether written or oral, relating to the subject matter hereof and thereof. In event of a conflict between the terms of this Designation, and the Program Terms, the Program Terms shall prevail.

C. Amendment. This Designation may not be amended except by a writing executed by Qualified Purchaser and Illinois Department of Central Management Services.

D. No Joint Venture. Neither this Designation nor Qualified Purchaser's participation in the Program shall be deemed to create or intend a joint venture or a partnership between Qualified Purchaser and the State or any agency or instrumentality thereof or deem any party the agent of the other.

E. Uncertainty of Payment. Qualified Purchaser is aware that Qualified Accounts Receivable are unsecured obligations of the State and that the State's payment thereof is subject to risk and cannot be guaranteed.

F. Invalidity of Designation/Choice of Law. If any provision of this Designation shall be rendered invalid by operation of law or otherwise, such provision shall be construed as separate and severable and shall not affect or impair the rights and obligations of Qualified Purchaser under the remainder of this Designation, unless the invalidity of such provision shall substantially defeat the purposes of this Designation. This Designation shall be governed by and shall be construed and enforced in accordance with the internal laws of the State of Illinois.

IN WITNESS WHEREOF, the undersigned has caused this Designation to be executed by its duly authorized representative as of the date set forth below.

[QUALIFIED PURCHASER]

By: _____
 Name:
 Title:
 Date:

Exhibit D

[LETTERHEAD]

[PURCHASER]

Re: State Acknowledgement

Ladies and Gentlemen:

We are in receipt of that certain Assignment Agreement (the “Agreement”) dated [_____] by and among [PURCHASER] (“Qualified Purchaser”) and [VENDOR] (“Participating Vendor”), pursuant to which certain Assigned Receivables (as defined in the Agreement) have been assigned by Participating Vendor to Qualified Purchaser. Effective as of the date hereof, [AGENCY] hereby acknowledges Participating Vendor’s assignment of the Assigned Receivables to Qualified Purchaser, and recognizes Qualified Purchaser as the assignee and owner of the Assigned Receivables.

We have certified that the payment is valid and have approved the appropriate voucher changes at the Illinois Office of the Comptroller for proper delivery.

[AGENCY]

By: _____

[_____]

Director

EXHIBIT E

March [], 2011

Illinois Department of Central Management Services
Attn: General Counsel
100 W. Randolph St., Ste. 4-500
Chicago, Illinois 60601-3219

Re: Assignment Representation Letter

General Counsel:

Please be advised that pursuant to Section II.5 of the Program Terms governing the State of Illinois Vendor Payment Program, this letter is being sent to inform you that the undersigned Participating Vendor (the "Assignor") desires to assign to [] (the "Assignee") all of its right, title and interest in the Qualified Accounts Receivable that are the subject of that certain Assignment Agreement dated [], by and among [] and [] (the "Agreement"), subject to the State's right to review and approve or deny such assignment pursuant to section II.5 of the Program Terms.

As signatory to this letter, Assignee acknowledges and consents to, and agrees to be bound by and adhere to, each of the Program Terms, the terms of the Agreement, and the terms of all other ancillary documents and agreements related to the Program and the Agreement, in each case, in the same manner as the Assignor. Additionally, Assignee adopts and ratifies the representations made in, and agrees to be bound by all the terms of that certain Qualified Purchaser Designation dated [], 2011 executed by [] (the "Designation"), including, but not limited to the following representations:

- (1) Qualified Purchaser has all requisite authority to agree to the Program Terms and to this Qualified Purchaser Designation (the "**Designation**"), to enter into the Program and to perform all obligations required to be performed by it as a Qualified Purchaser under the Program Terms, and that the execution and delivery of this Designation by Qualified Purchaser does not, and the performance of its obligations under this Designation and the Program will not, conflict with any provision of any law, regulation or administrative rule, or any agreement or court or administrative order or decree binding upon Qualified Purchaser.
- (2) In the event that any assignment of a Qualified Account Receivable to Qualified Purchaser pursuant to the Program is considered to be a sale of a security under the Securities Act of 1933 (the "Act"), Qualified Purchaser is a "qualified institutional buyer" as defined under Rule 144A promulgated under the Act.
- (3) In the event that any assignment of a Qualified Account Receivable to Qualified Purchaser pursuant to the Program is considered to be a sale of a security under the Securities Act of 1933 (the "Act"), Qualified Purchaser understands that the

EXHIBIT E

Qualified Account Receivable would constitute an exempted security under the Act and that registration is not legally required as of the date hereof and further understands that the Qualified Accounts Receivable (a) are not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, and (c) may not be readily marketable and are subject to certain restrictions on transfer, all of which may require Qualified Purchaser to hold the Qualified Account Receivable for an indefinite period of time.

- (4) Qualified Purchaser understands that (a) the Qualified Accounts Receivable are not secured by any pledge of any moneys received or to be received from taxation by the State of Illinois or any political division thereof, and (b) the Qualified Account Receivables do not represent a pledge of the faith and credit of the State or any political subdivision thereof.
- (5) Qualified Purchaser acknowledges that it has either been supplied with or has been given access to information to which a reasonable investor would attach significance in making investment decisions, and Qualified Purchaser has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Program and Qualified Accounts Receivable. Qualified Purchaser acknowledges that it has not relied upon, and will not rely upon, the State or any Participating Vendor for any information in connection with the Qualified Purchaser’s purchase of any Qualified Accounts Receivable and that it has the requisite knowledge and experience to evaluate the risks associated with the purchase of a Qualified Account Receivable and has consulted with its own legal and financial advisors with respect thereto.

The Agreement and Designation are attached hereto for your reference.

[ASSIGNOR]

By: _____
Name:
Title:

[ASSIGNEE]

By: _____
Name:
Title:

Appendix D

Qualified Purchaser Checklist

Checklist for Interested Qualified Purchasers

To be considered as a Qualified Purchaser with the State of Illinois, Vendor Payment Program, we require the following information.

I. GENERAL REQUIREMENTS

Confirmed	Brief Description	Description / Response	Term Section
<input type="checkbox"/>	Complete "Qualified Purchaser Designation"	Complete, execute and deliver a Qualified Purchaser Designation to CMS for approval.	I (definition of Qualified Purchaser and Qualified Purchaser Designation)
<input type="checkbox"/>	Complete "Sub-Participant Certification" (as applicable)	Complete, execute and deliver a Sub-Participant Certificate to CMS for approval.	I (definition of Qualified Purchaser, Sub-Participant and Sub-Participant Designation)
<input type="checkbox"/>	CMS Site Visit	Arrange for and successfully conduct initial and follow-up CMS location site visits and walk-throughs.	General/IV (second to last paragraph)
<input type="checkbox"/>	Demonstrate ability to field phone calls	Establish and operate phone systems acceptable to CMS to answer and address vendor phone calls.	General/IV
<input type="checkbox"/>	Plan for organizational workflow	Establish and operate processes and procedures acceptable to CMS to successfully run VPP.	General/IV

II. GENERAL QUALIFIED PURCHASER DESIGNATION REQUIREMENTS

Confirmed	Brief Description	Description	Term Section
<input type="checkbox"/>	Minimum purchase amount	Agree to commit a minimum purchase amount as established by CMS	I (definition of Qualified Purchaser)
<input type="checkbox"/>	Funding of minimum purchase amount	Demonstrate ability and agree to fund the minimum purchase commitment	I (definition of Qualified Purchaser)
<input type="checkbox"/>	Standards of Responsibility	Meet the standards of responsibility in accordance with the Standards of Responsibility found in 44 Ill. Adm. Code 1.2046(b) (Government Contracts, Procurement, and Property Management)	I (definition of Qualified Purchaser)
<input type="checkbox"/>	Administration of VPP	Demonstrate ability and agree to administer and facilitate operation of the VPP, including assisting potential	I (definition of Qualified Purchaser)/IV.a

		participating vendors with the application and assignment process	
<input type="checkbox"/>	Website	Demonstrate ability and agree to establish a website determined by CMS to be sufficient to administer the VPP	I (definition of Qualified Purchaser)/IV.b
<input type="checkbox"/>	Marketing	Demonstrate ability and agree to market the VPP to potential participating vendors	I (definition of Qualified Purchaser)/IV.c
<input type="checkbox"/>	Education	Demonstrate ability and agree to educate participating vendors about the benefits and risks associated with the VPP	I (definition of Qualified Purchaser)/IV.d
<input type="checkbox"/>	Account maintenance	Demonstrate ability and agree to deposit funds in, release funds from, and maintain all required accounts in accordance with the VPP, at no cost to the participating vendors	I (definition of Qualified Purchaser)/IV.e
<input type="checkbox"/>	Reporting	Demonstrate ability and agree to run submit a monthly report to CMS, in hard copy and Excel format, within 10 days following each month, containing at a minimum the following: (a) listing of each assigned receivable purchased, specifying the base invoice amount, invoice date, name of participating vendor, State contract number, voucher number and State agency associated with the assigned receivable; (b) listing each assigned receivable for which payment from the State has been received, including amount, date on which payment was made, name of the participating vendor, State contract number, voucher number and State agency associated with the assigned receivable; (c) listing of any payments of assigned penalties received from the State, including amount, date on which payment as made, name of the participating vendor, voucher number and the associated assigned receivable; (d) the aggregate number and dollar value of assigned receivables purchased; (e) aggregate number and dollar value of assigned receivables purchased for which no payment by the State has yet been received; and (f) other data requested by CMS.	I (definition of Qualified Purchaser)/IV.f

<input type="checkbox"/>	Collection of prompt payment penalties	Demonstrate ability and agree to diligently pursue receipt of assigned penalties	I (definition of Qualified Purchaser)/IV.g
<input type="checkbox"/>	Implementation of VPP	Demonstrate ability and agree to implement VPP terms and perform obligations	I (definition of Qualified Purchaser)/IV.h
<input type="checkbox"/>	Sub-Participants	Submit all Sub-Participants to CMS for review/approval	I (definition of Qualified Purchaser)

III. GENERAL SUB-PARTICIPANT CERTIFICATION REQUIREMENTS (AS APPLICABLE)

Confirmed	Brief Description	Description	Term Section
<input type="checkbox"/>	Standards of Responsibility	Demonstrate ability and agree to meet standards of responsibility in accordance with the Standards of Responsibility found in 44 Ill. Adm. Code 1.2046(b) (Government Contracts, Procurement, and Property Management)	I (definition of Qualified Purchaser)/Sub-Participant Certification
<input type="checkbox"/>	Collection of prompt payment penalties	Demonstrate ability and agree to cause Qualified Purchaser to diligently pursue receipt of assigned penalties	IV (last paragraph)
<input type="checkbox"/>	Implementation of VPP	Demonstrate ability and agree to cause Qualified Purchaser implement VPP terms and perform obligations	IV (last paragraph)
<input type="checkbox"/>	Approval	Review/approval by CMS	I (definition of Qualified Purchaser)

IV. FINANCIAL REQUIREMENTS

Confirmed	Brief Description	Description	Term Section
<input type="checkbox"/>	Financial structure	Acceptable financial structure of both Qualified Purchaser and Sub-Participants (as applicable)	General/I (definition of Qualified Purchaser)
<input type="checkbox"/>	Financial ability	Acceptable financial ability of both Qualified Purchaser and Sub-Participants (as applicable) The combined equity and other financing will allow the Qualified Purchaser to hold at least \$50 million of receivables at any time.	General/I (definition of Qualified Purchaser)
<input type="checkbox"/>	Financial statements	Most recent Financial Statement (including Balance Sheet) of both Qualified Purchaser and Sub-Participants (as applicable)	General/I (definition of Qualified Purchaser)
<input type="checkbox"/>	Loan and credit agreements	Copies of all signed loan agreements and line of credit agreements of both Qualified Purchaser (as applicable) and Sub-Participants (as applicable)	General/I (definition of Qualified Purchaser)

<input type="checkbox"/>	Contributions	Proof of Contribution(s) by all owners of Qualified Purchaser and Sub-Participants (as applicable) to acquire stock in Qualified Purchaser or Sub-Participant (as applicable) or startup capital (e.g., cancelled checks, signed loan agreements, bank statements, promissory notes)	General/I (definition of Qualified Purchaser)
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V. SYSTEM REQUIREMENTS

Confirmed	Brief Description	Description	Term Section
<input type="checkbox"/>	Allow Vendors to Securely Register for the Program	System must allow for secure transmission of vendor data and user information (e.g., usernames, passwords, FEINs, etc.) through a vendor registration form, and shall have or support some mechanism or process by which vendor registrations are reviewed for legitimacy and accuracy.	II.1
<input type="checkbox"/>	Allow Vendors to Securely Register for the Program	The website must allow for vendor login, providing vendor access to review receivables currently in process within the Program.	II.1
<input type="checkbox"/>	Allow Vendors to Submit Assignment Agreements	System must allow for secure transmission and secure receipt/storage of vendor Assignment Agreements, each of which shall contain unique State receivable data (Voucher Numbers, Contracting Agencies, Proper Bill Dates and Base Invoice Amounts). System must maintain execution status per Assignment Agreement such that only fully executed agreements are delivered to the State for processing, which at the time of delivery were associated with Vendors free and clear of material liens. Receivables may only be listed on one Assignment Agreement.	II.2/II.4
<input type="checkbox"/>	Process Receivables According to State Payment Status	System must maintain accurate status for the receivables it has received such that paid and otherwise unqualified receivables are not submitted for inclusion in the Program.	II.2
<input type="checkbox"/>	Submit "Qualified" Registered Vendors to the State	System must demonstrate ability to differentiate and process only those vendors determined to be "qualified" on both a vendor by vendor and period by period basis, such that registrations and subsequent filings (e.g. Assignment Agreements) are disseminated only as	II.2

		appropriate. Example: website must NOT disseminate Assignment Agreements to vendors and/or to State for processing if vendor is deemed unqualified for the current application period and/or in general, such as but not limited to the existence of liens against a vendor's receivables.	
<input type="checkbox"/>	System Maintains Complete Receivable Data	System must maintain all receivable data required to meet all reporting and payment obligations.	III
<input type="checkbox"/>	System Maintains Dates for Processing Time Sensitive Obligations	System shall record the date of State Acknowledgement and the date of State payment such that subsequent deposits and payments are scheduled/made within the allotted time requirements.	III.1/III.2/III.4
<input type="checkbox"/>	System Maintains Payment Instructions	Payments must be made at the participating vendor's preferred payment method, thus the system must be able record such instructions and process payments in accordance with the instruction.	III.1
<input type="checkbox"/>	System Calculates Accurate PPP Amounts, Distributes Estimates	System shall demonstrate the ability to record proper payments dates and calculate accurate Prompt Payment Penalty estimates based on the Base Invoice Amount, Proper Bill Date and the State recognized payment date. System shall have a means of modifying the PPP amount to reflect any variance in Agency response to any estimate.	III.2
<input type="checkbox"/>	System Calculates Accurate Deferred Payment Amounts	System shall demonstrate the ability to calculate and process both deferred payments. (Sum of the two deferred payments and the advanced amount shall equal exactly 100% of the Base Invoice Amount.)	III.3
<input type="checkbox"/>	System Maintains Accurate Offset Data	System shall demonstrate the ability to maintain accurate Unsecured Shortfall balance.	III.5
<input type="checkbox"/>	System Shall Produce Monthly Report / Reconciliation Data	System shall demonstrate the ability to produce a monthly report detailing a listing of each assigned receivable and its processing status for the reporting period, e.g., receivables purchased, Base Invoice payments received, Prompt Payment Penalty payments received, advance and deferred payments made to vendors, aggregate quantities processed to date, and so on. (Refer to Program	IV.f

		Terms for full reporting details for this requirement.)	
<input type="checkbox"/>	Produce Real Time Receivable Processing Status Reports	System shall demonstrate the ability to produce ad hoc reports as may be requested by the State from time to time. At a minimum, reporting must include Voucher Number, associated Vendor and Agency, Proper Bill Date, its processing status (e.g., whether or not the receivable has been acknowledged, advanced, and which, if any, deferred payments have been processed), and current Prompt Payment Penalty amounts.	General
<input type="checkbox"/>	Secure Data Storage and Transmission	Provide a secure systems architecture, such as but not limited to being able to limit access to vendor and State data on a vendor user by vendor user basis as well as to only those internal users who have a business need to access such data, where such access is secured via user accounts and commercially acceptable password standards and the session is encrypted (SSL).	General

Appendix E

Vendors Selling Accounts Receivable: FY19-FY20

Count	Selling Vendor	# Sold	\$ Sold
1	997 Galena, LLC	4	\$9,553.28
2	Above and Beyond Cleaning Specialists, Inc.	79	\$330,379.50
3	Adulthood Transition Center	11	\$41,640.00
4	Advanced Commodities, Inc.	326	\$9,419,513.55
5	Advanced Digital Media, Inc.	4	\$13,920.00
6	Advanced PLM Sales, Inc.	2	\$538,245.10
7	Aetna Health, Inc.	23	\$111,112,147.80
8	Aetna Life Insurance Company	40	\$26,648,039.94
9	Allan Baker, Inc.	17	\$61,973.30
10	Ashunti Residential Management Systems, Inc.	3	\$29,734.88
11	AT&T	35	\$4,037,762.33
12	AZANAF, LLC	2	\$54,890.00
13	BI, Inc.	36	\$1,510,357.21
14	Bianchi Milling Enterprises, Inc.	284	\$4,156,671.02
15	Big Business Enterprise, LLC	4	\$40,743.59
16	Bowake, LLC	5	\$8,987.50
17	Breakthrough Technologies, LLC	3	\$1,560,000.00
18	CDS Office Systems, Inc.	1	\$29,250.00
19	CA, Inc.	12	\$4,581,860.16
20	Carlinville Associates, LLC	5	\$9,093.26
21	CDW	217	\$128,811,755.16
22	Cellco Partnership	97	\$13,642,409.36
23	Center For Artistic Expression	6	\$8,633.30
24	Chem-Wise Ecological Pest Management Service, Inc.	18	\$2,620.00
25	Cicero Manufacturing & Supply Company, Inc.	74	\$148,055.38
26	Claudia's & Eddie's Place, NFP	1	\$3,208.80
27	Club Tex, Inc.	7	\$161,862.27
28	Corporate Cleaning Services, Inc.	1	\$2,845.00
29	Coventry Healthcare of Illinois, Inc.	18	\$12,887,879.64
30	Craftmaster Hardware Company, Inc.	16	\$26,294.31
31	CVK Enterprises, Inc.	14	\$21,377.38
32	DC Waste & Recycling, Inc.	12	\$36,649.35
33	DEMWAY, LLC	2	\$12,911.00
34	Drellishak & Drellishak, Inc.	8	\$28,632.67
35	Dunbar Armored, Inc.	4	\$38,944.83
36	Elbeco, Inc.	33	\$95,156.07
37	Elite Houses of Sober Living, Inc.	16	\$136,301.25
38	Equifax Workforce Solutions	1	\$154,977.97
39	F. James Garbe	1	\$15,756.71
40	Ficek Electric & Communication Systems, Inc.	137	\$2,005,970.73
41	Fidelity Security Life Insurance Company	23	\$15,459,396.55
42	Fisher Scientific Company, LLC	46	\$79,284.77

Count	Selling Vendor	# Sold	\$ Sold
43	Frontier Communications Corporation	16	\$173,965.00
44	Frontier North, Inc.	13	\$140,782.55
45	Galls	105	\$330,045.03
46	Gary E. Burg	3	\$4,877.76
47	Gateway Foundation, Inc.	3	\$92,336.40
48	Gateway FS, Inc.	4	\$11,327.38
49	Geo. Reentry Services, LLC	4	\$375,743.94
50	Gilson Enterprises, Inc.	13	\$9,637.66
51	Glenkirk	47	\$104,913.02
52	Gold Edge Supply, Inc.	6	\$16,627.00
53	Good Source Solutions, Inc.	8	\$143,387.92
54	Hand-N-Hand Outreach, NFP	11	\$50,515.54
55	Health Alliance Medical Plans, Inc.	54	\$925,377,772.45
56	Healthcare Service Corporation	49	\$510,924,172.15
57	Henson Robinson Company	145	\$444,469.26
58	Hogan Marren, LTD	2	\$60,489.90
59	Home Builders Institute	23	\$1,366,004.00
60	Humana Benefits Plan of Illinois	45	\$11,075,707.52
61	Illinois Bell Telephone Company	97	\$26,567,499.81
62	In Stock Supply, Inc.	71	\$65,299.92
63	Industrial Soap Company	28	\$27,792.58
64	Inner City Youth and Adult Foundation, Inc.	12	\$75,330.00
65	International Business Machines Corporation	191	\$54,532,483.12
66	International Cleaning Services, Inc.	66	\$157,130.68
67	Jones Environmental Control, Inc.	6	\$28,726.59
68	K & K Chemical Supply, LLC	54	\$262,047.66
69	K & R Properties, Inc.	6	\$77,456.58
70	KaZee, Inc.	1	\$5,411.82
71	Key Government Finance, Inc.	5	\$688,531.31
72	Kleen Air Service Corporation	1	\$6,100.00
73	LabMetrics, Inc.	1	\$3,225.00
74	Lawmen's & Shooters' Supply, Inc.	12	\$52,139.96
75	Linda K. Schneider	10	\$28,212.40
76	Lindsey Fisher	7	\$63,578.62
77	LIPOMED, Inc.	1	\$695.00
78	Logan Agri-Service, Inc.	1	\$1,870.71
79	Logsdon Stationers, Inc.	584	\$331,945.94
80	Lynn Peavy Company	1	\$1,492.60
81	Majestic Foods, Inc.	26	\$505,045.81
82	Malcolm Eaton Enterprises	218	\$1,882,282.24
83	Mallard Point Development, Inc.	6	\$15,185.64
84	MARCO Technologies, LLC	5	\$5,268.86
85	Martin Sullivan, Inc.	1	\$1,284.87
86	MBA Enterprises-3, Inc.	3	\$97,038.76
87	Milliman, Inc.	6	\$2,619,814.45
88	Modern Optical, LTD	50	\$244,663.70

Count	Selling Vendor	# Sold	\$ Sold
89	Morneau Shepell Limited	12	\$8,437,284.90
90	Multilingual Connections, LLC	161	\$237,476.81
91	Municipal Emergency Services, Inc.	7	\$36,501.30
92	NAVICO, Inc.	1	\$1,266.38
93	NCS Pearson, Inc.	3	\$10,691,598.91
94	Neher Electric Supply, Inc.	31	\$51,648.88
95	Neiman Bros. Company, Inc.	19	\$113,318.23
96	New Life Centers of Chicagoland, NFP	13	\$309,066.94
97	New Start Rescue Mission	6	\$4,980.00
98	NEXUS	17	\$2,311,150.55
99	Offutt Development, Inc.	8	\$29,397.20
100	On-Line Security Systems, LLC	60	\$251,200.80
101	Pershing Place Mall	7	\$36,512.00
102	Petro Family Investment Limited Partnership	8	\$43,807.75
103	Pettway Carpet Cleaning	4	\$4,400.00
104	Premier Staffing Source, Inc.	108	\$226,453.85
105	Presidio Infrastructure Solutions, LLC	66	\$9,250,678.66
106	Probst Refrigeration & Heating, Inc.	43	\$59,404.46
107	Protocol Criminal Justice, Inc.	17	\$1,565,424.64
108	Ray O'Herron Company, Inc.	101	\$501,073.33
109	REAP Englewood, NFP	9	\$29,760.00
110	Redwood Toxicology Laboratory, Inc.	78	\$87,145.00
111	Retrieval Business Systems, Inc.	15	\$141,554.51
112	RICCA	15	\$70,033.38
113	Ron's Produce Company	731	\$1,578,911.30
114	Safer Foundation	5	\$915,099.52
115	Salvatore Cirrincione	57	\$37,975.14
116	SBC Global Services, Inc.	6	\$31,442.01
117	SEICO, Inc.	7	\$15,241.80
118	Self-Mind, LLC	6	\$15,960.00
119	Silk Screen Express, Inc.	73	\$65,438.44
120	SimplexGrinnell	101	\$411,496.17
121	South Hill, LLC	6	\$28,802.02
122	Southern FS, Inc.	11	\$36,280.10
123	Spires Wholesale Grocery	3	\$4,045.63
124	Springfield Partners, LLC	5	\$221,896.51
125	Stanley's Family Sports Grille, Inc.	14	\$48,262.50
126	Storycatchers Theatre	2	\$81,388.99
127	Stratton Hats, Inc.	2	\$17,644.00
128	T Roberts Fabrics, Inc.	1	\$19,872.00
129	T S Products, Inc.	2	\$119,196.00
130	Target Area Development Corporation	9	\$106,250.00
131	Taylor & Associates Reporting, Inc.	88	\$54,790.23
132	The House of James	8	\$218,700.00
133	The Light of Christ Church, Inc.	17	\$145,110.00
134	The Smithereen Company	1	\$10,830.00

Count	Selling Vendor	# Sold	\$ Sold
135	Tiles in Style, LLC	43	\$243,540.73
136	Town and Country Group, LLC	5	\$165,825.00
137	TQBM, Inc.	1	\$7,922.00
138	Tri-Tech Forensics, Inc.	3	\$21,492.50
139	United Healthcare of Illinois, Inc.	15	\$223,059,924.66
140	Universal Protection Service, LP	296	\$4,929,860.47
141	Veritext SPH-A Reporting Company	1	\$1,345.50
142	Victoria Court Reporting Service, Inc.	1	\$1,012.85
143	WestCare Foundation, Inc.	2	\$770,258.94
144	WestCare Illinois, Inc.	52	\$2,388,533.26
145	Wexford Health Sources, Inc.	71	\$45,410,920.89
146	Wiley Office Equipment Company	6	\$52,109.95
147	Xtreme Cleaning Service	5	\$5,750.00
148	Youth Outreach Services	30	\$525,372.21
Totals		6,164	\$2,193,285,653.83

Source: OAG developed from monthly reporting.

Appendix F

Agency Responses

CMS

ILLINOIS JB Pritzker, Governor
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES
Janel L. Forde, Director

Bureau of Internal Audit
Jack Rakers, Chief Internal Auditor
320 W. Washington, 1st Floor ♦ Springfield, IL 62701

June 1, 2021

Mike Maziarz, Senior Audit Manager
Office of the Auditor General
Iles Park Plaza
740 East Ash
Springfield, IL 62703

Dear Mr. Maziarz,

Attached are the Department of Central Management Services' responses to the confidential recommendations resulting from the Vendor Payment Program's performance audit for Fiscal Years 2019 and 2020 that was conducted by your office pursuant to Public Act 100-1089.

Please do not hesitate to contact me at (217) 524-0828, or email me at Jack.Rakers@illinois.gov if you have any questions or concerns.

Yours truly,

SIGNED ORIGINAL ON FILE

Jack Rakers
Chief Internal Auditor

Attachment

RESPONSES TO THE VENDOR PAYMENT PROGRAM PERFORMANCE AUDIT**RECOMMENDATION 1:**

CMS and the IOC should determine which activities each agency has responsibility for under the Vendor Payment Program and memorialize those responsibilities in an Intergovernmental Agreement.

AGENCY RESPONSE:

CMS agrees with the recommendation. CMS will work with the IOC to develop an Intergovernmental Agreement that outlines the activities each agency is responsible for under the VPP.

RECOMMENDATION 2:

CMS should comply with State rules and define an application period when it seeks to add qualified purchasers to the Vendor Payment Program.

AGENCY RESPONSE:

CMS agrees with the recommendation. CMS does not intend to pursue additional Qualified Purchasers at this time. If CMS does pursue this in the future, an application period will be established when seeking to add qualified purchasers to the Vendor Payment Program.

RECOMMENDATION 3:

CMS should perform the review necessary and document the selection process, including testing of applicant information technology capabilities, for qualified purchasers in the Vendor Payment Program.

AGENCY RESPONSE:

CMS agrees with the recommendation. CMS does not intend to pursue additional Qualified Purchasers at this time. If CMS does pursue this in the future, a documented selection process will be developed for future applicants of the Vendor Payment Program.

RECOMMENDATION 4:

CMS and the IOC should enforce the requirement of the maintenance and review of Deferred Payment Reserve Accounts under the Vendor Payment Program. Additionally, the IOC and CMS should make a definite determination as to whether the existing qualified purchasers are exempt from maintaining a Deferred Payment Reserve Account.

AGENCY RESPONSE:

CMS agrees with the recommendation. CMS is currently reviewing the Program Terms and preparing updates to reflect recommendations for further discussion with the IOC, Qualified Purchasers, and vendors.

RECOMMENDATION 5:

CMS and the IOC should clarify when the General Assembly expects financial backer disclosures to be filed for the Vendor Payment Program. Additionally, CMS and the IOC should consider revising the joint administrative rules to codify financial backer disclosures, including when those disclosures need to be filed. Finally, CMS and the IOC should ensure that all qualified purchasers are submitting all required information on the financial backer disclosures, and in a timely manner.

AGENCY RESPONSE:

CMS agrees with the recommendation. The IOC proposed an amendment to adjust the submission date, allowing 30 additional days for data to be provided for the previous fiscal year. CMS will work with the IOC to improve procedures for the submission, review, and approval of financial backer disclosures.

RECOMMENDATION 7:

CMS and the IOC should take the steps necessary to make all monthly reporting criteria be consistent for the Vendor Payment Program. Additionally, CMS and the IOC should confirm that all required information is submitted by the qualified purchasers on the monthly reports.

AGENCY RESPONSE:

CMS agrees with the recommendation. CMS will work with the IOC to confirm that all required information is submitted consistently by the qualified purchasers.

RECOMMENDATION 8:

CMS should enforce the requirements of the State Prompt Payment Act relative to only eligible receivables being included in the assignment agreements submitted by qualified purchasers. If CMS believes the inclusion of receivables less than 90 days old is appropriate it should seek changes to the Act and the Vendor Payment Program Terms.

AGENCY RESPONSE:

CMS does acknowledge that vendors sign off on receivables prior to 90 days and therefore not yet eligible for the program; however, CMS does not finalize approval paperwork nor submit final documentation that includes any receivables that are not ultimately eligible. This is evidenced by the fact that no exceptions were noted as part of this finding. CMS considers the final approved paperwork to be the official Assignment Agreement, as many receivables that are included in the original paperwork are not ultimately assigned due to factors such as payment already made to the vendor, ineligible funding sources, or administrative holds, to name a few. CMS recognizes the point in this recommendation and will modify the Vendor Payment Program Terms and the Assignment Agreement paperwork to provide a disclaimer that receivables submitted prior to 90 days will not be eligible for VPP until 90 days from Proper Bill Date. CMS will continue to operate as it currently does, while modifying the Terms and adding the disclaimer to the paperwork.

RECOMMENDATION 9:

CMS and the IOC, as the parties responsible for the Vendor Payment Program, should ensure that qualified purchasers operate under the Program Terms relative to the payment process.

AGENCY RESPONSE:

CMS agrees with the recommendation. CMS will amend the Program Terms to ensure that qualified purchasers are operating in compliance with the terms.

RECOMMENDATION 10:

CMS and the IOC should follow the Program Terms for the Vendor Payment Program and only allow participating vendors to utilize a single qualified purchaser unless that qualified purchaser has violated terms of the assignment agreement or Program. Additionally, CMS should maintain documentation to support why it approved to allow a participating vendor to utilize more than one qualified purchaser at a time.

AGENCY RESPONSE:

CMS agrees with the recommendation. CMS will work with the vendors to identify one qualified purchaser to work with moving forward.



ILLINOIS OFFICE OF COMPTROLLER

SUSANA A. MENDOZA
COMPTROLLER

June 17, 2021

Mr. Michael Maziarz
Senior Audit Manager
Office of the Auditor General
740 East Ash Street
Springfield, IL 62703

Dear Mr. Maziarz:

The attached document is submitted as the official response from the Illinois Office of Comptroller to Recommendation #6. It is my understanding that this is the final document that you are waiting on from the IOC to finalize the audit. If you have any questions, please do not hesitate to contact Ellen Andres at 217-782-2467 or ellen.andres@illinoiscomptroller.gov.

Sincerely,

SIGNED ORIGINAL ON FILE

Susana A. Mendoza
Illinois State Comptroller

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VPP Audit

Illinois Office of Comptroller's Responses

#1 TOPIC SENTENCE (Summary) - CMS and the IOC, while having authority to administer the Vendor Payment Program (Program), do not have any agreement that **details the responsibilities of each agency** in administering the Program.

Recommendation: (Action Needed): CMS and the IOC should determine which activities each agency has responsibility for under the Vendor Payment Program and memorialize those responsibility in an Intergovernmental Agreement.

IOC Response: This finding fails to recognize that all administrative duties related to the operation of the Program do and always have rested with CMS. The IOC partially agrees with the recommendation and agrees to seek to clarify the IOC's role via an Intergovernmental Agreement (IGA) with CMS. The IOC disagrees with the Auditor General's interpretation of the Act and cause statements that are used to demonstrate a cause and a need for a finding and recommendation.

The Act assigns CMS the sole authority to perform the acts related to the *administration* of the Program, specifically:

- the review and approval/disapproval of all applicants seeking qualified purchaser (QP) designation (30 ILCS 540/8(f));
- the specification of the format of QP monthly reports (30 ILCS 540/[8](f)(9)); and
- the review and approval of sub-participants (30 ILCS 540/8(h)).

Information and registration materials for the Program are housed on the CMS website.

(<https://www2.illinois.gov/cms/About/VendorPayment/Pages/VPPEligibility.aspx>) Aside from the receipt and publication of monthly QP reports and the receipt and publication of financial backer disclosures (which are concurrently performed with CMS), the only substantive roles the Comptroller has in statute and in the Program Terms require consultation with CMS. Those roles – possession of the authority to terminate a QP from the program and the authority to terminate the program altogether – are entirely discretionary. Furthermore, the Program Terms (housed on CMS' website and last updated in 2012) do not provide for any unilateral administrative responsibility to be given to the IOC. A 2011 email from [former IOC official] to [former CMS official], quoted in the abstract by the Auditor General without context, does not demonstrate that the IOC participated in the administration of the Program, as is being suggested by the Office of the Auditor General (OAG). Rather, it is simply a relayed statement that the chief of staff from three Comptroller administrations ago wanted the program to get *implemented*.

The IOC initiated legislation in 2020, which was held due to the restrictions placed on session because of COVID-19, and again in 2021 in Senate Bill 581, seeking to clarify it is declarative under existing roles that CMS – not the IOC – is authorized to establish and implement the Program. The IOC will retain current authority to assist CMS if conditions warrant a QP's termination from the Program and current responsibility to post monthly QP reports and financial backer disclosures in conjunction with CMS.

Auditor Comment #1

We disagree with IOC's conclusion that we failed to recognize that all administrative duties related to the operation of the Program do and have always rested with CMS.

In fact, IOC appears to have oversimplified and slighted its responsibility to the administrative aspects of the Program. IOC does make mention that the statute and Program Terms include IOC in several administrative functions in consultation with CMS including: performance reviews, the ability to terminate both qualified purchasers and/or sub-participants, and the ability to terminate the Program.

Regardless of whether or not these decisions are joint decisions with the CMS, IOC would need to actively be involved with the above administrative duties to be able to jointly assist CMS in any related decisions regarding qualified purchasers, sub-participants or overall Program termination as specified in the joint administrative rules and the State Prompt Payment Act as amended by Public Act 100-1089.

#2 TOPIC SENTENCE (Summary): CMS and the IOC have not enforced Program Terms relative to Deferred Payment Reserve Accounts for the Vendor Payment Program (Program).

RECOMMENDATION (Action needed): CMS and the IOC should enforce the requirement of the maintenance and review of Deferred Payment Reserve Accounts under the Vendor Payment Program. Additionally, the IOC and CMS should make a definite determination as to whether the existing qualified purchasers are exempt from maintaining a Deferred Payment Reserve Account.

IOC RESPONSE: The IOC disagrees with this recommendation. This finding also fails to recognize that all administrative duties related to the operation of the Program do and always have rested with CMS. The IOC will agree to seek to clarify the IOC's role via an IGA with CMS. The IOC disagrees with the Auditor General's interpretation of the Act assigning administrative duties to the IOC. The Act assigns CMS the sole authority to perform the acts related to the administration of the Program.

Auditor Comment #2:

We again disagree with the IOC's conclusion that we failed to recognize that all administrative duties related to the operation of the Program do and have always rested with CMS.

Per the Act, a qualified purchaser or sub-participant may be terminated from the Program for a breach or failure to meet any of the terms or conditions of the Program. One of the conditions of the Program is the maintenance of a deferred payment reserve account. It is questionable how the IOC, in consultation with CMS, could jointly decide to terminate a qualified purchaser absent knowing anything about the maintenance of such an account.

#5 TOPIC SENTENCE (Summary): CMS and the IOC allow qualified purchasers to submit financial backer disclosures after the fact. Disclosures due July 1, 2020 had yet to be published, therefore, the public has had **639 days of not knowing who the financial backers were for the Program**. We found that disclosures were not always filed timely and that CMS and the IOC do not know whether the disclosures are accurate.

RECOMMENDATION (Action needed): CMS and the IOC should clarify when the General Assembly expects financial backer disclosures to be filed for the Vendor Payment Program. Additionally, CMS and the IOC should consider revising its joint administrative rules to document when the disclosures need to be filed. Finally, CMS and the IOC should ensure that all qualified purchasers are submitting all required information on the financial backer disclosures, and in a timely manner.

IOC RESPONSE: The IOC agrees with the Auditor General on clarifying the timing of financial backer disclosure information. The IOC agrees to work collaboratively with CMS to publish the reports timely.

The financial backer disclosures are an IOC creation borne out of a concern over lack of transparency in the Program at the height of Governor Rauner's budget impasse. There were no financial backer disclosures prior to this IOC initiative. The disclosure requirements are codified in P.A. 100-1089. The Joint Committee on Administrative Rules does not favor rulemakings that simply restate statutory language, so the IOC disagrees that a standalone rulemaking for the disclosures is necessary.

Recognizing the impracticality of expecting QPs to file complete and timely disclosures the day after the end of a fiscal year (July 1), the IOC passed legislation in the spring 2021 session to move the due date to August 1. That change further clarifies both agencies' interpretation that the required reporting to CMS and the IOC is for information relative to a complete fiscal year. The issues raised by the OAG regarding the timing of the disclosures demonstrate a misunderstanding of how disclosures work. Like all other disclosures seeking disclosure of ownership interests, the financial backer disclosures, as they relate to the disclosure of ownership interests, are a "snapshot in time" reflection of the ownership of a company on the date they are signed. The OAG's notion of "disclosure after the fact" does not make logical sense. There is no way for a QP to disclose what the ownership of its business will be on January 1, 2021 on a disclosure submitted on July 1, 2020. Furthermore, the disclosures also require QPs to disclose information related to earnings, and disclosing earnings that have yet to be earned is obviously also a literal impossibility. As the OAG finding notes, there is already a continuing obligation on the QPs to submit updated disclosures in the event of a change in ownership interest. Therefore, the statement made by the Auditor General in the Topic Sentence that "the public has had **639 days of not knowing who the financial backers were for the Program**" is an entirely inaccurate exaggeration.

Auditor Comment #3:

In its response, the IOC takes credit for the financial backer disclosures citing an apparent lack of transparency prior to this IOC initiative, an IOC initiative that originally only required the disclosures to be submitted to CMS. We would think that if the intent is to provide transparency with regard to who is in Program, this information regarding Program participation should be provided at that time. Providing such information after the fact is neither helpful nor transparent, as sub-participants may no longer be in the Program.

As the IOC points out, disclosure of interests are a "snapshot in time". In the finding, we did not project future ownership interests. Since the disclosures, specific to ownership, are a "snapshot in time", there should be no reason why the ownership information is not attested at the time the backer disclosures are submitted at July 1 annually. As the IOC notes, it is a continuing obligation of qualified purchasers to submit updated disclosures in the event of a change in ownership interest. Therefore, the IOC's accusation of our misunderstanding of ownership is not valid.

#6 TOPIC SENTENCE (Summary): While the IOC allows State vendors to receive payments electronically, qualified purchasers under the Vendor Payment Program (Program) **do not have the same opportunity**. Qualified purchasers reported **over \$7.2 million in payments** made under the Program were mailed to a party other than the qualified purchaser. We found payments mailed to: an incorrect qualified purchaser; an incorrect sub-participant; and the vendor as opposed to the qualified purchaser.

RECOMMENDATION (Action needed): The IOC should take the steps necessary to eliminate sending payments under the Vendor Payment Program to the incorrect entity. Additionally, the IOC should consider having vendors and qualified purchasers contact the IOC when State payments have been misdirected. Finally, the IOC should determine the cost of processing payments on hardcopy warrants for the Program to determine whether it is the most cost effective process.

IOC RESPONSE: The recommendation has three parts:

1. The IOC agrees to work with State agencies and CMS to remind agencies to correctly submit a voucher for VPP payments to the original vendor with the QP's name and mailing address below it. The IOC sends the payment to the name and address on the voucher as it is submitted for payment by each state agency.
2. The IOC is not opposed to having vendors contact us when payments are sent to the original vendor. The IOC has not been opposed to working with or receiving information from QP's on tracking payments. However, the most direct and efficient way to remedy the situation after a payment has been sent to the original vendor is for the QPs to go to the agency making the original payment to the vendor. After vouchers are sent to the IOC for payment, the IOC can't make changes to a voucher without an agency's approval. Vendors were not turned away from the IOC if they called about payments.
3. The IOC strongly disagrees with the OAG's conditions found that lead to the recommendation to determine the cost of processing hardcopy payments versus direct deposit to determine the most cost-effective process for the VPP payments.
 - *“The IOC, as noted on the IOC website, offers vendors who provide goods and services to the State of Illinois a more efficient and secure method of receiving their payments through an Electronic Funds Transfer (EFT) Direct Deposit system. Direct deposit payments **bypass the printing and mailing procedures** and are transmitted electronically to the vendor's financial institution for posting to its accounts. Generally, payments made via direct deposit take two banking days to be debited to the account specified.”*

“While State vendors can receive their payments via direct deposit from the IOC, qualified purchasers cannot. Payments of the base invoice amount and the prompt pay penalties are remitted by the IOC to the qualified purchasers via hard copy warrants.” These statements are true; however, the IOC believes they are misleading. As previously explained to the OAG, the IOC is not making a choice to send QPs only hard copy warrants; and thereby, slowing down their payments and costing the QPs and the state more money. Due to IRS reporting requirements and the State Accounting Management System (SAMS) limitations, VPP payments can only be sent via hard copy. For correct tax reporting, the IOC must link the original vendor and the payment made to the original vendor for performing services or providing materials to the State in order to report the correct amounts on the 1099 tax form. When a voucher is sent from an agency for prompt payment interest to the qualified purchaser, the payment must be made to the original vendor, using their tax identification number, and in care of the QP using the QP's address. If the agencies do not include the qualified purchaser's information on the voucher, the IOC system will send the payment to the vendor's address on the voucher. But, because the original vendor is on the voucher, the IOC will attach the proper 1099 tax information to the original vendor. If the tax edits and direct deposit edits were eased up to allow for two vendors, there is a greater chance of 1099 tax mistakes and deposits being made to wrong bank accounts. The hardcopy warrant eliminates this potential risk.

- *“Misdirected payments occur when payments are sent to the wrong vendor. We asked the IOC, on October 29, 2020, if it thought the misdirection of State payments to the incorrect party was a problem for the Program. The IOC replied, “Not really. The volume appears to be low and the parties of the contract are responsible to address any potential receivable processing issue.”* The IOC agrees that a payment being sent to the wrong vendor via hardcopy or direct deposit is not an acceptable standard of practice. However, the payments questioned in this audit are being sent directly to the original vendors because the state agencies are directing the IOC to do so. If the paying state agency has not correctly entered the QP's address on the voucher, the only information the IOC has is to send the payment as directed by the agency. The original vendors have a written and binding contractual agreement requiring them to forward the “misdirected”

payments to the qualified purchaser. These payments are neither going to unknown vendors nor are they lost.

- The IOC does not dispute that direct deposit is less expensive than making payments via warrants. The IOC is not choosing to implement the program in more costly, less efficient manner by sending hard copy warrants. As explained to the OAG, due to 1099 tax reporting and system editing limitations for fraud control, qualified purchasers can only receive hard copy warrants because direct deposit edits allow for only one vendor name and number per voucher. The recommendation by the OAG to allow for qualified purchasers to be allowed to receive payments through direct deposit in order to save money is not possible without easing up on system edit checks for direct deposit fraud and inaccuracy in 1099 reporting.

Auditor Comment #4:

The IOC cites the contractual relationship between the qualified purchaser and vendors as their responsibility to reconcile. While that might be true, there were other forms of misdirected payments including payments sent to the wrong qualified purchasers and instances of payments to the wrong sub-participant. That contractual relationship, based on a document developed by the State, has the vendor assigning all rights to payments from the State to the qualified purchasers. We think that this problem of misdirected payments, which the finding shows has been around since at least July 2013, should be resolved by the State of Illinois and not between the vendors and qualified purchasers. Those entities have historically waited long enough for their payments without chasing the funds due to the State misdirecting the payments.

The IOC disagreement with the condition section of the finding is confusing given the IOC states the text cited is accurate. The IOC states we are misleading yet much of the text comes from the IOC website.

The IOC blames this misdirection of payments on the system edit limitations in SAMS as well as tax reporting, which should have been known prior to the enactment of Public Act 100-1089. However, the IOC reported that misdirected payments were “not really” a problem, when questioned. “The volume appears to be low and the parties of the contract are responsible to address any potential receivable processing issue.” As shown in the finding, just five months prior to Public Act 100-1089 becoming effective, over \$13 million in checks were misdirected to an incorrect sub-participant.

For interest payments due under the Prompt Payment Act, which are the majority of the misdirected payments in question, it is unclear why those payments would ever be sent to the vendor or why the vendor would report the assigned interest on a 1099. By execution and delivery of an Assignment Agreement to a qualified purchaser, a vendor consents to the assignment of all of its rights to payment by the State of a base invoice amount and any associated prompt pay penalties. Auditors twice asked, on November 19, 2020 and May 12, 2021, for the tax reporting requirements. The IOC has never provided those tax reporting requirements to us.

#7 TOPIC SENTENCE (Summary): CMS and the IOC have not taken the necessary actions to confirm that all qualified purchasers have complied with the monthly reporting requirements for the Vendor Payment Program (Program). This has **resulted in missing data** on the monthly reporting that occurred during FY19 and FY20. Additionally, the **guidance on what should be reported is inconsistent** with the directives from the State Prompt Payment Act (Act).

RECOMMENDATION (Action needed): CMS and the IOC should take the steps necessary to make all monthly reporting criteria be consistent for the Vendor Payment Program. Additionally, CMS and the IOC should confirm that all required information is submitted by the qualified purchasers on the monthly reports.

IOC RESPONSE: The IOC agrees that additional steps could be attempted to provide more consistent reporting to CMS and the IOC. However, the lack of resources and data to fully reconcile outstanding invoices and interest owed, among the items previously noted by CMS, make it virtually impossible to have 100% consistency in reporting.

Auditor Comment #5:

While the IOC agrees with the recommendation and makes note that more steps could be attempted to make more consistent reporting, the IOC uses the excuse of a lack of resources and data for not taking these steps. This lack of consistent reporting is not only a failure to comply with the Act by the qualified purchasers, but also questions whether the State is getting all the needed Program information.

#9 TOPIC SENTENCE (Summary): CMS and the IOC have allowed qualified purchasers to operate the payment process under the Vendor Payment Program (Program) in violation of the Program Terms. This can result in one qualified purchaser having a competitive advantage over another if its payment terms are more generous than another qualified purchaser.

RECOMMENDATION (Action needed): CMS and the IOC, as the parties responsible for the Vendor Payment Program, should ensure that qualified purchasers operate under the Program Terms relative to the payment process.

IOC RESPONSE: The IOC disagrees with the claim that the IOC shares responsibility with CMS in this finding. This finding also fails to recognize that all administrative duties related to the operation of the Program do and always have rested with CMS. The IOC will agree to seek to clarify the IOC's role via an IGA with CMS.

Auditor Comment #6:

We again disagree with the IOC's conclusion that we failed to recognize that all administrative duties related to the operation of the Program do and have always rested with CMS. We reiterate that per the Act, the IOC has the right to review performance. We believe the payment process is part of qualified purchasers' performance under the Program. We would think the IOC would want to ensure the qualified purchasers make payments in compliance with the Program.

#10 TOPIC SENTENCE (Summary): CMS and the IOC did not enforce a Program Term for the Vendor Payment Program (Program) when they allowed participating vendors to switch selling receivables among different qualified purchasers.

RECOMMENDATION (Action needed): CMS and the IOC should follow the Program Terms for the Vendor Payment Program and only allow participating vendors to utilize a single qualified purchaser unless that qualified purchaser has violated terms of the assignment agreement or Program. Additionally, CMS should maintain documentation to support why it approved to allow a participating vendor to utilize more than one qualified purchaser at a time.

IOC RESPONSE: The IOC disagrees with the claim that the IOC shares responsibility with CMS in this finding. This finding also fails to recognize that all administrative duties related to the operation of the Program do and always have rested with CMS. The IOC will agree to seek to clarify the IOC's role via an IGA with CMS.

Auditor Comment #7:

We again disagree with the IOC's conclusion that we failed to recognize that all administrative duties related to the operation of the Program do and have always rest with CMS. We reiterate that per the Act, the IOC has the right to review performance. We believe vendors switching between different qualified purchasers for the sale of receivables is a part of qualified purchaser performance and a violation of Program Terms.

#11 TOPIC SENTENCE (Summary): The IOC does not have a plan for the payment of interest penalties under the Vendor Payment Program (Program). This lack of a plan has resulted in delayed payments which has a negative impact on both qualified purchasers and State vendors. For a sampling of interest payments during FY19-FY20, **payments were made between 0 and 547 days from when the State agencies requested the payments.**

RECOMMENDATION (Action needed): The IOC should develop a plan for when interest penalty payments should be made under the Vendor Payment Program.

IOC RESPONSE: The IOC strongly disagrees with this finding. The Program was enacted by the General Assembly to assist vendors financially unable to wait for their delayed state payments due to the increasing backlog of unpaid bills. There is nothing in state law that requires the IOC to prioritize late interest penalty payments, including payments to QPs. The IOC cannot, and should not, be required by the Auditor General's Office to make a plan for payment of interest and follow it without any regard to daily revenues and prioritization of core state programs, debt services, and pension payments.

The IOC must triage core payments daily so they are made without additional delay. It would be irresponsible to follow a plan that, depending on the day, could put QP late payment interest payments ahead of education, human/social services, medical, or debt service payments. The IOC's current cash-management protocols include a comprehensive review of all pending daily payments and available state resources that aim to direct payments to the most essential state program recipients and to lower the amount of accruing interest penalties that taxpayers have to pay for pending bills in the system. During difficult fiscal times, the IOC needs maximum flexibility to manage the state's bill backlog so essential payments serving the most vulnerable citizens are met and are performed in the best interest of taxpayers. It is noteworthy that at the end of May 2021, all possible prompt payment vouchers that the IOC could pay were processed. The only pending amounts left unpaid were due to insufficient appropriation levels in the Group Health Insurance program for the remaining months of fiscal year 2021, making it impossible for the IOC to process these vouchers until new appropriation authority is enacted by the General Assembly. If a plan were enacted today, it would be changed tomorrow because each day has a different payment emergency presented to the IOC. Cash management during a deficit of billions of dollars cannot be reduced to a written plan to follow.

The Auditor General's Office incorrectly assumed or implied that QPs wait longer to receive their interest payments than vendors not associated with the Program. Prompt payment interest vouchers are all held together and when funding allows, payments are released.

[SEE NEXT PAGE FOR AUDITOR COMMENT.]

Auditor Comment #8:

The IOC misses the point of the recommendation. We did not recommend to the IOC to make qualified purchaser interest payments ahead of education, human/social services, medical, or debt service payments as suggested by the IOC.

We did recommend that the IOC develop a plan, when interest money is available, to pay qualified purchasers interest payments they are entitled to. As an example to demonstrate the need for such a plan, on the most recent monthly (April 2021) reports available on the IOC's website (as of June 15, 2021), VAP and VCF both separately reported having outstanding invoices with proper bill dates from July 2015. We continue to recommend the need for a plan, especially considering the State has failed to pay prompt payment interest on proper bills which are more than 5 years old.

Further, as stated in the audit, delays in interest payments to qualified purchases means vendors, including small State vendors, are similarly delayed in receiving the final 10 percent they are owed by the State, which they may be relying on for their existence. Reducing the burden caused by delayed payments to pay State vendors is the very reason the Program came into existence.

The IOC is incorrect that auditors assumed qualified purchasers wait longer to receive their interest payments. As stated in the report, "The IOC does not maintain statistics for how long it takes to pay base payments or the prompt payment interest for vendors not in the Program. Therefore, we were unable to compare the Program penalty payments in our analysis to vendors that chose not to participate in the Program." We were able to determine, in our sample of Program interest payments during FY19-FY20, that payments were made between 0 and 547 days from when the State agencies requested the payments.

