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H. R. 4053

IN THE SENATE OF THE UNITED STATES

DECEMBER 17, 2012

Received

AN ACT

To intensify efforts to identify, prevent, and recover payment error, waste, fraud, and abuse within Federal spending.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Improper Payments
3 Elimination and Recovery Improvement Act of 2012”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act—

6 (1) the term “agency” means an executive
7 agency as that term is defined under section 102 of
8 title 31, United States Code;

9 (2) the term “improper payment” has the
10 meaning given that term in section 2(g) of the Im-
11 proper Payments Information Act of 2002 (31
12 U.S.C. 3321 note), as redesignated by section
13 3(a)(1) of this Act; and

14 (3) the term “State” means each State of the
15 United States, the District of Columbia, each terri-
16 tory or possession of the United States, and each
17 federally recognized Indian tribe.

18 **SEC. 3. IMPROVING THE DETERMINATION OF IMPROPER**
19 **PAYMENTS BY FEDERAL AGENCIES.**

20 (a) IN GENERAL.—Section 2 of the Improper Pay-
21 ments Information Act of 2002 (31 U.S.C. 3321 note) is
22 amended—

23 (1) by redesignating subsections (b) through (g)
24 as subsections (c) through (h), respectively;

25 (2) by inserting after subsection (a) the fol-
26 lowing:

1 “(b) IMPROVING THE DETERMINATION OF IMPROPER
2 PAYMENTS.—

3 “(1) IN GENERAL.—The Director of the Office
4 of Management and Budget shall on an annual
5 basis—

6 “(A) identify a list of high-priority Federal
7 programs for greater levels of oversight and re-
8 view—

9 “(i) in which the highest dollar value
10 or highest rate of improper payments
11 occur; or

12 “(ii) for which there is a higher risk
13 of improper payments; and

14 “(B) in coordination with the agency re-
15 sponsible for administering the high-priority
16 program, establish annual targets and semi-an-
17 nual or quarterly actions for reducing improper
18 payments associated with each high-priority
19 program.

20 “(2) REPORT ON HIGH-PRIORITY IMPROPER
21 PAYMENTS.—

22 “(A) IN GENERAL.—Subject to Federal
23 privacy policies and to the extent permitted by
24 law, each agency with a program identified
25 under paragraph (1)(A) on an annual basis

1 shall submit to the Inspector General of that
2 agency, and make available to the public (in-
3 cluding availability through the Internet), a re-
4 port on that program.

5 “(B) CONTENTS.—Each report under this
6 paragraph—

7 “(i) shall describe—

8 “(I) any action the agency—

9 “(aa) has taken or plans to
10 take to recover improper pay-
11 ments; and

12 “(bb) intends to take to pre-
13 vent future improper payments;
14 and

15 “(ii) shall not include any referrals
16 the agency made or anticipates making to
17 the Department of Justice, or any informa-
18 tion provided in connection with such re-
19 ferrals.

20 “(C) PUBLIC AVAILABILITY ON CENTRAL
21 WEBSITE.—The Office of Management and
22 Budget shall make each report submitted under
23 this paragraph available on a central website.

24 “(D) AVAILABILITY OF INFORMATION TO
25 INSPECTOR GENERAL.—Subparagraph (B)(ii)

1 shall not prohibit any referral or information
2 being made available to an Inspector General as
3 otherwise provided by law.

4 “(E) ASSESSMENT AND RECOMMENDA-
5 TIONS.—The Inspector General of each agency
6 that submits a report under this paragraph
7 shall, for each program of the agency that is
8 identified under paragraph (1)(A)—

9 “(i) review—

10 “(I) the assessment of the level
11 of risk associated with the program,
12 and the quality of the improper pay-
13 ment estimates and methodology of
14 the agency relating to the program;
15 and

16 “(II) the oversight or financial
17 controls to identify and prevent im-
18 proper payments under the program;
19 and

20 “(ii) submit to Congress recommenda-
21 tions, which may be included in another re-
22 port submitted by the Inspector General to
23 Congress, for modifying any plans of the
24 agency relating to the program, including

1 improvements for improper payments de-
2 termination and estimation methodology.”;

3 (3) in subsection (d) (as redesignated by para-
4 graph (1) of this subsection), by striking “subsection
5 (b)” each place that term appears and inserting
6 “subsection (c)”;

7 (4) in subsection (e) (as redesignated by para-
8 graph (1) of this subsection), by striking “subsection
9 (b)” and inserting “subsection (c)”; and

10 (5) in subsection (g)(3) (as redesignated by
11 paragraph (1) of this subsection), by inserting “or
12 a Federal employee” after “non-Federal person or
13 entity”.

14 (b) IMPROVED ESTIMATES.—

15 (1) IN GENERAL.—Not later than 180 days
16 after the date of enactment of this Act, the Director
17 of the Office of Management and Budget shall pro-
18 vide guidance to agencies for improving the esti-
19 mates of improper payments under the Improper
20 Payments Information Act of 2002 (31 U.S.C. 3321
21 note).

22 (2) GUIDANCE.—Guidance under this sub-
23 section shall—

24 (A) strengthen the estimation process of
25 agencies by setting standards for agencies to

1 follow in determining the underlying validity of
2 sampled payments to ensure amounts being
3 billed, paid, or obligated for payment are prop-
4 er;

5 (B) instruct agencies to give the persons or
6 entities performing improper payments esti-
7 mates access to all necessary payment data, in-
8 cluding access to relevant documentation;

9 (C) explicitly bar agencies from relying on
10 self-reporting by the recipients of agency pay-
11 ments as the sole source basis for improper
12 payments estimates;

13 (D) require agencies to include all identi-
14 fied improper payments in the reported esti-
15 mate, regardless of whether the improper pay-
16 ment in question has been or is being recovered;

17 (E) include payments to employees, includ-
18 ing salary, locality pay, travel pay, purchase
19 card use, and other employee payments, as sub-
20 ject to risk assessment and, where appropriate,
21 improper payment estimation; and

22 (F) require agencies to tailor their correc-
23 tive actions for the high-priority programs iden-
24 tified under section 2(b)(1)(A) of the Improper
25 Payments Information Act of 2002 (31 U.S.C.

1 3321 note) to better reflect the unique proc-
2 esses, procedures, and risks involved in each
3 specific program.

4 (c) TECHNICAL AND CONFORMING AMENDMENTS.—
5 The Improper Payments Elimination and Recovery Act of
6 2010 (Public Law 111–204; 31 U.S.C. 3321 note.) is
7 amended—

8 (1) in section 2(h)(1), by striking “section 2(f)”
9 and all that follows and inserting “section 2(g) of
10 the Improper Payments Information Act of 2002
11 (31 U.S.C. 3321 note).”; and

12 (2) in section 3(a)—

13 (A) in paragraph (1), by striking “section
14 2(f)” and all that follows and inserting “section
15 2(g) of the Improper Payments Information Act
16 of 2002 (31 U.S.C. 3321 note).”; and

17 (B) in paragraph (3)—

18 (i) by striking “section 2(b)” each
19 place it appears and inserting “section
20 2(c).”; and

21 (ii) by striking “section 2(c)” each
22 place it appears and inserting “section
23 2(d).”.

1 **SEC. 4. IMPROPER PAYMENTS INFORMATION.**

2 Section 2(a)(3)(A)(ii) of the Improper Payments In-
3 formation Act of 2002 (31 U.S.C. 3321 note) is amended
4 by striking “with respect to fiscal years following Sep-
5 tember 30th of a fiscal year beginning before fiscal year
6 2013 as determined by the Office of Management and
7 Budget” and inserting “with respect to fiscal year 2014
8 and each fiscal year thereafter”.

9 **SEC. 5. DO NOT PAY INITIATIVE.**

10 (a) PREPAYMENT AND PREAWARD PROCEDURES.—

11 (1) IN GENERAL.—Each agency shall review
12 prepayment and preaward procedures and ensure
13 that a thorough review of available databases with
14 relevant information on eligibility occurs to deter-
15 mine program or award eligibility and prevent im-
16 proper payments before the release of any Federal
17 funds.

18 (2) DATABASES.—At a minimum and before
19 issuing any payment and award, each agency shall
20 review as appropriate the following databases to
21 verify eligibility of the payment and award:

22 (A) The Death Master File of the Social
23 Security Administration.

24 (B) The General Services Administration’s
25 Excluded Parties List System.

1 (C) The Debt Check Database of the De-
2 partment of the Treasury.

3 (D) The Credit Alert System or Credit
4 Alert Interactive Voice Response System of the
5 Department of Housing and Urban Develop-
6 ment.

7 (E) The List of Excluded Individuals/Enti-
8 ties of the Office of Inspector General of the
9 Department of Health and Human Services.

10 (b) DO NOT PAY INITIATIVE.—

11 (1) ESTABLISHMENT.—There is established the
12 Do Not Pay Initiative which shall include—

13 (A) use of the databases described under
14 subsection (a)(2); and

15 (B) use of other databases designated by
16 the Director of the Office of Management and
17 Budget in consultation with agencies and in ac-
18 cordance with paragraph (2).

19 (2) OTHER DATABASES.—In making designa-
20 tions of other databases under paragraph (1)(B), the
21 Director of the Office of Management and Budget
22 shall—

23 (A) consider any database that substan-
24 tially assists in preventing improper payments;
25 and

1 (B) provide public notice and an oppor-
2 tunity for comment before designating a data-
3 base under paragraph (1)(B).

4 (3) ACCESS AND REVIEW BY AGENCIES.—For
5 purposes of identifying and preventing improper
6 payments, each agency shall have access to, and use
7 of, the Do Not Pay Initiative to verify payment or
8 award eligibility in accordance with subsection (a)
9 when the Director of the Office of Management and
10 Budget determines the Do Not Pay Initiative is ap-
11 propriately established for the agency.

12 (4) PAYMENT OTHERWISE REQUIRED.—When
13 using the Do Not Pay Initiative, an agency shall rec-
14 ognize that there may be circumstances under which
15 the law requires a payment or award to be made to
16 a recipient, regardless of whether that recipient is
17 identified as potentially ineligible under the Do Not
18 Pay Initiative.

19 (5) ANNUAL REPORT.—The Director of the Of-
20 fice of Management and Budget shall submit to
21 Congress an annual report, which may be included
22 as part of another report submitted to Congress by
23 the Director, regarding the operation of the Do Not
24 Pay Initiative, which shall—

1 (A) include an evaluation of whether the
2 Do Not Pay Initiative has reduced improper
3 payments or improper awards; and

4 (B) provide the frequency of corrections or
5 identification of incorrect information.

6 (c) DATABASE INTEGRATION PLAN.—Not later than
7 60 days after the date of enactment of this Act, the Direc-
8 tor of the Office of Management and Budget shall provide
9 to the Congress a plan for—

10 (1) inclusion of other databases on the Do Not
11 Pay Initiative;

12 (2) to the extent permitted by law, agency ac-
13 cess to the Do Not Pay Initiative; and

14 (3) the data use agreements described under
15 subsection (e)(2)(D).

16 (d) INITIAL WORKING SYSTEM.—

17 (1) ESTABLISHMENT.—Not later than 90 days
18 after the date of enactment of this Act, the Director
19 of the Office of Management and Budget shall es-
20 tablish a working system for prepayment and
21 preaward review that includes the Do Not Pay Ini-
22 tiative as described under this section.

23 (2) WORKING SYSTEM.—The working system
24 established under paragraph (1)—

1 (A) may be located within an appropriate
2 agency;

3 (B) shall include not less than 3 agencies
4 as users of the system; and

5 (C) shall include investigation activities for
6 fraud and systemic improper payments detec-
7 tion through analytic technologies and other
8 techniques, which may include commercial data-
9 base use or access.

10 (3) APPLICATION TO ALL AGENCIES.—Not later
11 than June 1, 2013, each agency shall review all pay-
12 ments and awards for all programs of that agency
13 through the system established under this sub-
14 section.

15 (e) FACILITATING DATA ACCESS BY FEDERAL AGEN-
16 CIES AND OFFICES OF INSPECTORS GENERAL FOR PUR-
17 POSES OF PROGRAM INTEGRITY.—

18 (1) DEFINITION.—In this subsection, the term
19 “Inspector General” means any Inspector General
20 described in subparagraph (A), (B), or (I) of section
21 11(b)(1) of the Inspector General Act of 1978 (5
22 U.S.C. App.) and any successor Inspector General.

23 (2) COMPUTER MATCHING BY FEDERAL AGEN-
24 CIES FOR PURPOSES OF INVESTIGATION AND PRE-
25 VENTION OF IMPROPER PAYMENTS AND FRAUD.—

1 (A) IN GENERAL.—Except as provided in
2 this paragraph, in accordance with section 552a
3 of title 5, United States Code (commonly known
4 as the Privacy Act of 1974), each Inspector
5 General and the head of each agency may enter
6 into computer matching agreements with other
7 inspectors general and agency heads that allow
8 ongoing data matching (which shall include
9 automated data matching) in order to assist in
10 the detection and prevention of improper pay-
11 ments.

12 (B) REVIEW.—Not later than 60 days
13 after a proposal for an agreement under sub-
14 paragraph (A) has been presented to a Data In-
15 tegrity Board established under section 552a(u)
16 of title 5, United States Code, for consider-
17 ation, the Data Integrity Board shall respond
18 to the proposal.

19 (C) TERMINATION DATE.—An agreement
20 under subparagraph (A)—

21 (i) shall have a termination date of
22 less than 3 years; and

23 (ii) during the 3-month period ending
24 on the date on which the agreement is
25 scheduled to terminate, may be renewed by

1 the agencies entering the agreement for
2 not more than 3 years.

3 (D) MULTIPLE AGENCIES.—For purposes
4 of this paragraph, section 552a(o)(1) of title 5,
5 United States Code, shall be applied by sub-
6 stituting “between the source agency and the
7 recipient agency or non-Federal agency or an
8 agreement governing multiple agencies” for
9 “between the source agency and the recipient
10 agency or non-Federal agency” in the matter
11 preceding subparagraph (A).

12 (E) COST-BENEFIT ANALYSIS.—A jus-
13 tification under section 552a(o)(1)(B) of title 5,
14 United States Code, relating to an agreement
15 under subparagraph (A) is not required to con-
16 tain a specific estimate of any savings under
17 the computer matching agreement.

18 (3) GUIDANCE BY THE OFFICE OF MANAGE-
19 MENT AND BUDGET.—Not later than 6 months after
20 the date of enactment of this Act, and in consulta-
21 tion with the Council of the Inspectors General on
22 Integrity and Efficiency, the Secretary of Health
23 and Human Services, the Commissioner of Social
24 Security, and the head of any other relevant agency,

1 the Director of the Office of Management and Budget
2 shall—

3 (A) issue guidance for agencies regarding
4 implementing this subsection, which shall in-
5 clude standards for—

6 (i) reimbursement of costs, when nec-
7 essary, between agencies;

8 (ii) retention and timely destruction of
9 records in accordance with section
10 552a(o)(1)(F) of title 5, United States
11 Code; and

12 (iii) prohibiting duplication and re-
13 disclosure of records in accordance with
14 section 552a(o)(1)(H) of title 5, United
15 States Code;

16 (B) review the procedures of the Data In-
17 tegrity Boards established under section
18 552a(u) of title 5, United States Code, and de-
19 velop new guidance for the Data Integrity
20 Boards to—

21 (i) improve the effectiveness and re-
22 sponsiveness of the Data Integrity Boards;

23 (ii) ensure privacy protections in ac-
24 cordance with section 552a of title 5,

1 United States Code (commonly known as
2 the Privacy Act of 1974); and

3 (iii) establish standard matching
4 agreements for use when appropriate; and

5 (C) establish and clarify rules regarding
6 what constitutes making an agreement entered
7 under paragraph (2)(A) available upon request
8 to the public for purposes of section
9 552a(o)(2)(A)(ii) of title 5, United States Code,
10 which shall include requiring publication of the
11 agreement on a public website.

12 (4) CORRECTIONS.—The Director of the Office
13 of Management and Budget shall establish proce-
14 dures providing for the correction of data in order
15 to ensure—

16 (A) compliance with section 552a(p) of
17 title 5, United States Code; and

18 (B) that corrections are made in any Do
19 Not Pay Initiative database and in any relevant
20 source databases designated by the Director of
21 the Office of Management and Budget under
22 subsection (b)(1).

23 (5) COMPLIANCE.—The head of each agency, in
24 consultation with the Inspector General of the agen-
25 cy, shall ensure that any information provided to an

1 individual or entity under this subsection is provided
2 in accordance with protocols established under this
3 subsection.

4 (6) RULE OF CONSTRUCTION.—Nothing in this
5 subsection shall be construed to affect the rights of
6 an individual under section 552a(p) of title 5,
7 United States Code.

8 (f) DEVELOPMENT AND ACCESS TO A DATABASE OF
9 INCARCERATED INDIVIDUALS.—Not later than 1 year
10 after the date of enactment of this Act, the Attorney Gen-
11 eral shall submit to Congress recommendations for in-
12 creasing the use of, access to, and the technical feasibility
13 of using data on the Federal, State, and local conviction
14 and incarceration status of individuals for purposes of
15 identifying and preventing improper payments by Federal
16 agencies and programs and fraud.

17 (g) PLAN TO CURB FEDERAL IMPROPER PAYMENTS
18 TO DECEASED INDIVIDUALS BY IMPROVING THE QUALITY
19 AND USE BY FEDERAL AGENCIES OF THE SOCIAL SECU-
20 RITY ADMINISTRATION DEATH MASTER FILE.—

21 (1) ESTABLISHMENT.—In conjunction with the
22 Commissioner of Social Security and in consultation
23 with relevant stakeholders that have an interest in
24 or responsibility for providing the data, and the
25 States, the Director of the Office of Management

1 and Budget shall establish a plan for improving the
2 quality, accuracy, and timeliness of death data main-
3 tained by the Social Security Administration, includ-
4 ing death information reported to the Commissioner
5 under section 205(r) of the Social Security Act (42
6 U.S.C. 405(r)).

7 (2) ADDITIONAL ACTIONS UNDER PLAN.—The
8 plan established under this subsection shall include
9 recommended actions by agencies to—

10 (A) increase the quality and frequency of
11 access to the Death Master File and other
12 death data;

13 (B) achieve a goal of at least daily access
14 as appropriate;

15 (C) provide for all States and other data
16 providers to use improved and electronic means
17 for providing data;

18 (D) identify improved methods by agencies
19 for determining ineligible payments due to the
20 death of a recipient through proactive
21 verification means; and

22 (E) address improper payments made by
23 agencies to deceased individuals as part of Fed-
24 eral retirement programs.

1 (3) REPORT.—Not later than 120 days after
2 the date of enactment of this Act, the Director of
3 the Office of Management and Budget shall submit
4 a report to Congress on the plan established under
5 this subsection, including recommended legislation.

6 **SEC. 6. IMPROVING RECOVERY OF IMPROPER PAYMENTS.**

7 (a) DEFINITION.—In this section, the term “recovery
8 audit” means a recovery audit described under section
9 2(h) of the Improper Payments Elimination and Recovery
10 Act of 2010 (31 U.S.C. 3301 note).

11 (b) REVIEW.—The Director of the Office of Manage-
12 ment and Budget shall determine—

13 (1) current and historical rates and amounts of
14 recovery of improper payments (or, in cases in which
15 improper payments are identified solely on the basis
16 of a sample, recovery rates and amounts estimated
17 on the basis of the applicable sample), including a
18 list of agency recovery audit contract programs and
19 specific information of amounts and payments recov-
20 ered by recovery audit contractors; and

1 (2) targets for recovering improper payments,
2 including specific information on amounts and pay-
3 ments recovered by recovery audit contractors.

Passed the House of Representatives December 13,
2012.

Attest:

KAREN L. HAAS,

Clerk.