

Union Calendar No. 509

112TH CONGRESS
2^D SESSION

H. R. 4053

[Report No. 112-698]

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 2012

Mr. TOWNS (for himself, Mr. PLATTS, Mr. SCHRADER, Mr. CONNOLLY of Virginia, Mr. ALTMIRE, Mr. BARROW, Mr. BISHOP of Georgia, Mr. BOREN, Mr. BOSWELL, Mr. CARDOZA, Mr. COOPER, Mr. DONNELLY of Indiana, Mr. HOLDEN, Mr. MATHESON, Mr. MCINTYRE, Mr. MICHAUD, Mr. PETERSON, Mr. ROSS of Arkansas, Mr. DAVID SCOTT of Georgia, Mr. SHULER, and Mr. THOMPSON of California) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

NOVEMBER 30, 2012

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 16, 2012]

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Improper Payments*
5 *Elimination and Recovery Improvement Act of 2012”.*

6 **SEC. 2. DEFINITIONS.**

7 *In this Act—*

8 *(1) the term “agency” means an executive agen-*
9 *cy as that term is defined under section 102 of title*
10 *31, United States Code;*

11 *(2) the term “improper payment” has the mean-*
12 *ing given that term in section 2(g) of the Improper*
13 *Payments Information Act of 2002 (31 U.S.C. 3321*
14 *note), as redesignated by section 3(a)(1) of this Act;*
15 *and*

16 *(3) the term “State” means each State of the*
17 *United States, the District of Columbia, each terri-*
18 *tory or possession of the United States, and each fed-*
19 *erally recognized Indian tribe.*

20 **SEC. 3. IMPROVING THE DETERMINATION OF IMPROPER**
21 **PAYMENTS BY FEDERAL AGENCIES.**

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

1 (1) *by redesignating subsections (b) through (g)*
2 *as subsections (c) through (h), respectively;*

3 (2) *by inserting after subsection (a) the fol-*
4 *lowing:*

5 “(b) *IMPROVING THE DETERMINATION OF IMPROPER*
6 *PAYMENTS.—*

7 “(1) *IN GENERAL.—The Director of the Office of*
8 *Management and Budget shall on an annual basis—*

9 “(A) *identify a list of high-priority Federal*
10 *programs for greater levels of oversight and re-*
11 *view—*

12 “(i) *in which the highest dollar value*
13 *or highest rate of improper payments occur;*
14 *or*

15 “(ii) *for which there is a higher risk of*
16 *improper payments; and*

17 “(B) *in coordination with the agency re-*
18 *sponsible for administering the high-priority*
19 *program, establish annual targets and semi-an-*
20 *ual or quarterly actions for reducing improper*
21 *payments associated with each high-priority pro-*
22 *gram.*

23 “(2) *REPORT ON HIGH-PRIORITY IMPROPER PAY-*
24 *MENTS.—*

1 “(A) *IN GENERAL.*—Subject to Federal pri-
2 *vacancy policies and to the extent permitted by law,*
3 *each agency with a program identified under*
4 *paragraph (1)(A) on an annual basis shall sub-*
5 *mit to the Inspector General of that agency, and*
6 *make available to the public (including avail-*
7 *ability through the Internet), a report on that*
8 *program.*

9 “(B) *CONTENTS.*—Each report under this
10 *paragraph—*

11 “(i) *shall describe—*

12 “(I) *any action the agency—*

13 “(aa) *has taken or plans to*
14 *take to recover improper pay-*
15 *ments; and*

16 “(bb) *intends to take to pre-*
17 *vent future improper payments;*
18 *and*

19 “(ii) *shall not include any referrals the*
20 *agency made or anticipates making to the*
21 *Department of Justice, or any information*
22 *provided in connection with such referrals.*

23 “(C) *PUBLIC AVAILABILITY ON CENTRAL*
24 *WEBSITE.*—The Office of Management and Budg-

1 *et shall make each report submitted under this*
2 *paragraph available on a central website.*

3 “(D) *AVAILABILITY OF INFORMATION TO IN-*
4 *SPECTOR GENERAL.—Subparagraph (B)(ii) shall*
5 *not prohibit any referral or information being*
6 *made available to an Inspector General as other-*
7 *wise provided by law.*

8 “(E) *ASSESSMENT AND RECOMMENDA-*
9 *TIONS.—The Inspector General of each agency*
10 *that submits a report under this paragraph*
11 *shall, for each program of the agency that is*
12 *identified under paragraph (1)(A)—*

13 “(i) *review—*

14 “(I) *the assessment of the level of*
15 *risk associated with the program, and*
16 *the quality of the improper payment*
17 *estimates and methodology of the agen-*
18 *cy relating to the program; and*

19 “(II) *the oversight or financial*
20 *controls to identify and prevent im-*
21 *proper payments under the program;*
22 *and*

23 “(ii) *submit to Congress recommenda-*
24 *tions, which may be included in another re-*
25 *port submitted by the Inspector General to*

1 Congress, for modifying any plans of the
2 agency relating to the program, including
3 improvements for improper payments deter-
4 mination and estimation methodology.”;

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

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

12 (5) in subsection (g)(3) (as redesignated by para-
13 graph (1) of this subsection), by inserting “or a Fed-
14 eral employee” after “non-Federal person or entity”.
15 (b) *IMPROVED ESTIMATES.*—

16 (1) *IN GENERAL.*—Not later than 180 days after
17 the date of enactment of this Act, the Director of the
18 Office of Management and Budget shall provide guid-
19 ance to agencies for improving the estimates of im-
20 proper payments under the Improper Payments In-
21 formation Act of 2002 (31 U.S.C. 3321 note).

22 (2) *GUIDANCE.*—Guidance under this subsection
23 shall—

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

1 *low in determining the underlying validity of*
2 *sampled payments to ensure amounts being*
3 *billed, paid, or obligated for payment are proper;*

4 *(B) instruct agencies to give the persons or*
5 *entities performing improper payments estimates*
6 *access to all necessary payment data, including*
7 *access to relevant documentation;*

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

12 *(D) require agencies to include all identified*
13 *improper payments in the reported estimate, re-*
14 *gardless of whether the improper payment in*
15 *question has been or is being recovered;*

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

21 *(F) require agencies to tailor their correc-*
22 *tive actions for the high-priority programs iden-*
23 *tified under section 2(b)(1)(A) of the Improper*
24 *Payments Information Act of 2002 (31 U.S.C.*
25 *3321 note) to better reflect the unique processes,*

1 *procedures, and risks involved in each specific*
2 *program.*

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

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

10 (2) *in section 3(a)—*

11 (A) *in paragraph (1), by striking “section*
12 *2(f)” and all that follows and inserting “section*
13 *2(g) of the Improper Payments Information Act*
14 *of 2002 (31 U.S.C. 3321 note).”;* and

15 (B) *in paragraph (3)—*

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

19 (ii) *by striking “section 2(c)” each*
20 *place it appears and inserting “section*
21 *2(d).”.*

22 **SEC. 4. IMPROPER PAYMENTS INFORMATION.**

23 Section 2(a)(3)(A)(ii) *of the Improper Payments In-*
24 *formation Act of 2002 (31 U.S.C. 3321 note) is amended*
25 *by striking “with respect to fiscal years following September*

1 *30th of a fiscal year beginning before fiscal year 2013 as*
2 *determined by the Office of Management and Budget” and*
3 *inserting “with respect to fiscal year 2014 and each fiscal*
4 *year thereafter”.*

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

6 *(a) PREPAYMENT AND PREAWARD PROCEDURES.—*

7 *(1) IN GENERAL.—Each agency shall review pre-*
8 *payment and preaward procedures and ensure that a*
9 *thorough review of available databases with relevant*
10 *information on eligibility occurs to determine pro-*
11 *gram or award eligibility and prevent improper pay-*
12 *ments before the release of any Federal funds.*

13 *(2) DATABASES.—At a minimum and before*
14 *issuing any payment and award, each agency shall*
15 *review as appropriate the following databases to*
16 *verify eligibility of the payment and award:*

17 *(A) The Death Master File of the Social Se-*
18 *curity Administration.*

19 *(B) The General Services Administration’s*
20 *Excluded Parties List System.*

21 *(C) The Debt Check Database of the Depart-*
22 *ment of the Treasury.*

23 *(D) The Credit Alert System or Credit Alert*
24 *Interactive Voice Response System of the Depart-*
25 *ment of Housing and Urban Development.*

1 (E) *The List of Excluded Individuals/Enti-*
2 *ties of the Office of Inspector General of the De-*
3 *partment of Health and Human Services.*

4 (b) *DO NOT PAY INITIATIVE.*—

5 (1) *ESTABLISHMENT.*—*There is established the*
6 *Do Not Pay Initiative which shall include—*

7 (A) *use of the databases described under*
8 *subsection (a)(2); and*

9 (B) *use of other databases designated by the*
10 *Director of the Office of Management and Budget*
11 *in consultation with agencies and in accordance*
12 *with paragraph (2).*

13 (2) *OTHER DATABASES.*—*In making designa-*
14 *tions of other databases under paragraph (1)(B), the*
15 *Director of the Office of Management and Budget*
16 *shall—*

17 (A) *consider any database that substan-*
18 *tially assists in preventing improper payments;*
19 *and*

20 (B) *provide public notice and an oppor-*
21 *tunity for comment before designating a data-*
22 *base under paragraph (1)(B).*

23 (3) *ACCESS AND REVIEW BY AGENCIES.*—*For*
24 *purposes of identifying and preventing improper pay-*
25 *ments, each agency shall have access to, and use of,*

1 *the Do Not Pay Initiative to verify payment or*
2 *award eligibility in accordance with subsection (a)*
3 *when the Director of the Office of Management and*
4 *Budget determines the Do Not Pay Initiative is ap-*
5 *propriately established for the agency.*

6 (4) *PAYMENT OTHERWISE REQUIRED.—When*
7 *using the Do Not Pay Initiative, an agency shall rec-*
8 *ognize that there may be circumstances under which*
9 *the law requires a payment or award to be made to*
10 *a recipient, regardless of whether that recipient is*
11 *identified as potentially ineligible under the Do Not*
12 *Pay Initiative.*

13 (5) *ANNUAL REPORT.—The Director of the Office*
14 *of Management and Budget shall submit to Congress*
15 *an annual report, which may be included as part of*
16 *another report submitted to Congress by the Director,*
17 *regarding the operation of the Do Not Pay Initiative,*
18 *which shall—*

19 (A) *include an evaluation of whether the Do*
20 *Not Pay Initiative has reduced improper pay-*
21 *ments or improper awards; and*

22 (B) *provide the frequency of corrections or*
23 *identification of incorrect information.*

24 (c) *DATABASE INTEGRATION PLAN.—Not later than 60*
25 *days after the date of enactment of this Act, the Director*

1 *of the Office of Management and Budget shall provide to*
2 *the Congress a plan for—*

3 *(1) inclusion of other databases on the Do Not*
4 *Pay Initiative;*

5 *(2) to the extent permitted by law, agency access*
6 *to the Do Not Pay Initiative; and*

7 *(3) the data use agreements described under sub-*
8 *section (e)(2)(D).*

9 *(d) INITIAL WORKING SYSTEM.—*

10 *(1) ESTABLISHMENT.—Not later than 90 days*
11 *after the date of enactment of this Act, the Director*
12 *of the Office of Management and Budget shall estab-*
13 *lish a working system for prepayment and preaward*
14 *review that includes the Do Not Pay Initiative as de-*
15 *scribed under this section.*

16 *(2) WORKING SYSTEM.—The working system es-*
17 *tablished under paragraph (1)—*

18 *(A) may be located within an appropriate*
19 *agency;*

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

22 *(C) shall include investigation activities for*
23 *fraud and systemic improper payments detection*
24 *through analytic technologies and other tech-*

1 *niques, which may include commercial database*
2 *use or access.*

3 (3) *APPLICATION TO ALL AGENCIES.—Not later*
4 *than June 1, 2013, each agency shall review all pay-*
5 *ments and awards for all programs of that agency*
6 *through the system established under this subsection.*

7 (e) *FACILITATING DATA ACCESS BY FEDERAL AGEN-*
8 *CIES AND OFFICES OF INSPECTORS GENERAL FOR PUR-*
9 *POSES OF PROGRAM INTEGRITY.—*

10 (1) *DEFINITION.—In this subsection, the term*
11 *“Inspector General” means any Inspector General de-*
12 *scribed in subparagraph (A), (B), or (I) of section*
13 *11(b)(1) of the Inspector General Act of 1978 (5*
14 *U.S.C. App.) and any successor Inspector General.*

15 (2) *COMPUTER MATCHING BY FEDERAL AGEN-*
16 *CIES FOR PURPOSES OF INVESTIGATION AND PREVEN-*
17 *TION OF IMPROPER PAYMENTS AND FRAUD.—*

18 (A) *IN GENERAL.—Except as provided in*
19 *this paragraph, in accordance with section 552a*
20 *of title 5, United States Code (commonly known*
21 *as the Privacy Act of 1974), each Inspector Gen-*
22 *eral and the head of each agency may enter into*
23 *computer matching agreements with other in-*
24 *spectors general and agency heads that allow on-*
25 *going data matching (which shall include auto-*

1 mated data matching) in order to assist in the
2 detection and prevention of improper payments.

3 (B) *REVIEW*.—Not later than 60 days after
4 a proposal for an agreement under subparagraph
5 (A) has been presented to a Data Integrity
6 Board established under section 552a(u) of title
7 5, United States Code, for consideration, the
8 Data Integrity Board shall respond to the pro-
9 posal.

10 (C) *TERMINATION DATE*.—An agreement
11 under subparagraph (A)—

12 (i) shall have a termination date of
13 less than 3 years; and

14 (ii) during the 3-month period ending
15 on the date on which the agreement is
16 scheduled to terminate, may be renewed by
17 the agencies entering the agreement for not
18 more than 3 years.

19 (D) *MULTIPLE AGENCIES*.—For purposes of
20 this paragraph, section 552a(o)(1) of title 5,
21 United States Code, shall be applied by sub-
22 stituting “between the source agency and the re-
23 cipient agency or non-Federal agency or an
24 agreement governing multiple agencies” for “be-
25 tween the source agency and the recipient agency

1 or non-Federal agency” in the matter preceding
2 subparagraph (A).

3 (E) *COST-BENEFIT ANALYSIS.*—A justifica-
4 tion under section 552a(o)(1)(B) of title 5,
5 United States Code, relating to an agreement
6 under subparagraph (A) is not required to con-
7 tain a specific estimate of any savings under the
8 computer matching agreement.

9 (3) *GUIDANCE BY THE OFFICE OF MANAGEMENT*
10 *AND BUDGET.*—Not later than 6 months after the date
11 of enactment of this Act, and in consultation with the
12 Council of the Inspectors General on Integrity and
13 Efficiency, the Secretary of Health and Human Serv-
14 ices, the Commissioner of Social Security, and the
15 head of any other relevant agency, the Director of the
16 Office of Management and Budget shall—

17 (A) issue guidance for agencies regarding
18 implementing this subsection, which shall in-
19 clude standards for—

20 (i) reimbursement of costs, when nec-
21 essary, between agencies;

22 (ii) retention and timely destruction of
23 records in accordance with section
24 552a(o)(1)(F) of title 5, United States Code;
25 and

1 (iii) prohibiting duplication and re-
2 disclosure of records in accordance with sec-
3 tion 552a(o)(1)(H) of title 5, United States
4 Code;

5 (B) review the procedures of the Data Integ-
6 rity Boards established under section 552a(u) of
7 title 5, United States Code, and develop new
8 guidance for the Data Integrity Boards to—

9 (i) improve the effectiveness and re-
10 sponsiveness of the Data Integrity Boards;

11 (ii) ensure privacy protections in ac-
12 cordance with section 552a of title 5,
13 United States Code (commonly known as
14 the Privacy Act of 1974); and

15 (iii) establish standard matching
16 agreements for use when appropriate; and

17 (C) establish and clarify rules regarding
18 what constitutes making an agreement entered
19 under paragraph (2)(A) available upon request
20 to the public for purposes of section
21 552a(o)(2)(A)(ii) of title 5, United States Code,
22 which shall include requiring publication of the
23 agreement on a public website.

24 (4) CORRECTIONS.—The Director of the Office of
25 Management and Budget shall establish procedures

1 *providing for the correction of data in order to en-*
2 *sure—*

3 *(A) compliance with section 552a(p) of title*
4 *5, United States Code; and*

5 *(B) that corrections are made in any Do*
6 *Not Pay Initiative database and in any relevant*
7 *source databases designated by the Director of*
8 *the Office of Management and Budget under sub-*
9 *section (b)(1).*

10 *(5) COMPLIANCE.—The head of each agency, in*
11 *consultation with the Inspector General of the agency,*
12 *shall ensure that any information provided to an in-*
13 *dividual or entity under this subsection is provided*
14 *in accordance with protocols established under this*
15 *subsection.*

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

20 *(f) DEVELOPMENT AND ACCESS TO A DATABASE OF IN-*
21 *CARCERATED INDIVIDUALS.—Not later than 1 year after the*
22 *date of enactment of this Act, the Attorney General shall*
23 *submit to Congress recommendations for increasing the use*
24 *of, access to, and the technical feasibility of using data on*
25 *the Federal, State, and local conviction and incarceration*

1 *status of individuals for purposes of identifying and pre-*
2 *venting improper payments by Federal agencies and pro-*
3 *grams and fraud.*

4 *(g) PLAN TO CURB FEDERAL IMPROPER PAYMENTS TO*
5 *DECEASED INDIVIDUALS BY IMPROVING THE QUALITY AND*
6 *USE BY FEDERAL AGENCIES OF THE SOCIAL SECURITY AD-*
7 *MINISTRATION DEATH MASTER FILE.—*

8 *(1) ESTABLISHMENT.—In conjunction with the*
9 *Commissioner of Social Security and in consultation*
10 *with relevant stakeholders that have an interest in or*
11 *responsibility for providing the data, and the States,*
12 *the Director of the Office of Management and Budget*
13 *shall establish a plan for improving the quality, accu-*
14 *racy, and timeliness of death data maintained by the*
15 *Social Security Administration, including death in-*
16 *formation reported to the Commissioner under section*
17 *205(r) of the Social Security Act (42 U.S.C. 405(r)).*

18 *(2) ADDITIONAL ACTIONS UNDER PLAN.—The*
19 *plan established under this subsection shall include*
20 *recommended actions by agencies to—*

21 *(A) increase the quality and frequency of*
22 *access to the Death Master File and other death*
23 *data;*

24 *(B) achieve a goal of at least daily access*
25 *as appropriate;*

1 (C) provide for all States and other data
2 providers to use improved and electronic means
3 for providing data;

4 (D) identify improved methods by agencies
5 for determining ineligible payments due to the
6 death of a recipient through proactive
7 verification means; and

8 (E) address improper payments made by
9 agencies to deceased individuals as part of Fed-
10 eral retirement programs.

11 (3) *REPORT.*—Not later than 120 days after the
12 date of enactment of this Act, the Director of the Of-
13 fice of Management and Budget shall submit a report
14 to Congress on the plan established under this sub-
15 section, including recommended legislation.

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

17 (a) *DEFINITION.*—In this section, the term “recovery
18 audit” means a recovery audit described under section 2(h)
19 of the Improper Payments Elimination and Recovery Act
20 of 2010 (31 U.S.C. 3301 note).

21 (b) *REVIEW.*—The Director of the Office of Manage-
22 ment and Budget shall determine—

23 (1) current and historical rates and amounts of
24 recovery of improper payments (or, in cases in which
25 improper payments are identified solely on the basis

1 *of a sample, recovery rates and amounts estimated on*
2 *the basis of the applicable sample), including a list of*
3 *agency recovery audit contract programs and specific*
4 *information of amounts and payments recovered by*
5 *recovery audit contractors; and*

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

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