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EXAMINING SOLUTIONS TO CLOSE THE $106 BILLION IMPROPER PAYMENTS GAP

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT OPERATIONS

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

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EXAMINING SOLUTIONS TO CLOSE THE $106 BILLION IMPROPER PAYMENTS GAP

Wednesday, July 9, 2014

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT OPERATIONS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to call, at 1:39 p.m., in Room 2154, Rayburn House Office Building, Hon. John Mica [chairman of the subcommittee] presiding.

Present: Representatives Mica, Meadows, Massie, Issa, and Connolly.

Also Present: Representatives Jordan, DeSantis, and Clay.

Staff Present: Ali Ahmad, Professional Staff Member; Melissa Beaumont, Assistant Clerk; Molly Boyl, Deputy General Counsel and Parliamentarian; David Brewer, Senior Counsel; Caitlin Carroll, Press Secretary; Katelyn E. Christ, Professional Staff Member; Drew Colliatie, Professional Staff Member; John Cuaderes, Deputy Staff Director; Adam P. Fromm, Director of Member Services and Committee Operations; Linda Good, Chief Clerk; Tyler Grimm, Senior Professional Staff Member; Jennifer Hemingway, Deputy Policy Director; Christopher Hixon, Chief Counsel for Oversight; Michael R. Kiko, Legislative Assistant; Mark D. Marin, Deputy Staff Director for Oversight; Jeffrey Post, Senior Professional Staff Member; Laura L. Rush, Deputy Chief Clerk; Jessica Seale, Digital Director; Andrew Shult, Deputy Digital Director; Katy Summerlin, Press Assistant; Peter Warren, Legislative Policy Director; Rebecca Watkins, Communications Director; Eric Cho, Detailee; Tamara Alexander, Minority Counsel; Meghan Berroya, Minority Deputy Chief Counsel; Jaron Bourke, Minority Director of Administration; Aryele Bradford, Minority Press Secretary; Portia Brown, Minority Counsel; Devon Hill, Minority Research Assistant; Jennifer Hoffman, Minority Communications Director; and Cecelia Thomas, Minority Counsel.

Mr. MICA. Good afternoon. I'd like to welcome everyone to the Subcommittee on Government Operations, a subcommittee of the House Government Oversight and Reform Committee. Pleased to welcome Members.

And the title of today's hearing is "Examining Solutions to Close the $106 Billion Improper Payments Gap."

The order of business will be today that we'll have opening statements by Members, and we have one panel of witnesses. We'll recognize them, swear them in, and they will provide the committee

with their statements. And then we'll go to questions after we've completed hearing from the witnesses assembled today.

Again, I thank everyone for participating and attending. This is an important topic and actually part of the oversight committee's mission, and that's to accomplish two fundamental responsibilities. A lot of hardworking Americans send their taxpayer dollars here to Washington. They deserve to know how that money is spent. They need to make certain that our government operates efficiently, economically. And our responsibility in this committee and its predecessors back to their early 1800s is to protect those citizen rights and hold folks accountable in the Federal Government.

So that's the reason we're here today. And the purpose of this hearing is one in a series of hearings that we've had on improper payments, and this is an update hearing.

I'll start by yielding to myself, and I have some opening comments. Then we'll go to, as I said, the other Members.

First of all, again, we're going to discuss the very serious and, unfortunately, a very persistent problem of improper payments across the Federal Government.

Now, listen to this. The amounts here are absolutely staggering. But just in fiscal year 2013, agencies reported over $100 billion in improper payments. I asked the staff to go back and see how consistent this has been, has it changed much. And, actually, it's over $100 billion each of the last 5 years. That's a staggering half-a-trillion dollars in improper payments at a time when we're running trillions of dollars of deficit and that we're scrambling to try to do the best we can to make, again, Federal fiscal ends meet. It's an incredible amount of money that has been misappropriated and mispaid with improper payments.

Let me take just a minute and review some of the staggering statistics. The sheer number award has to go to CMS, the Centers for Medicare and Medicaid Services, which paid out, again, a huge amount of money. I think about $60 billion of the $100 billion is just an—let's put this little chart that we've got up here.

This chart says it all, and the chart shows Medicare Advantage and Medicaid. You add them up, and you have about $60 billion total improper payments out of about $100 billion. So, in sheer dollars alone, one of the areas that concerns me and every American is health care and the staggering cost of health care. And here we have improper payments to the tune of over $60 billion in just those programs.

Now, that sets the dollar record. However, one of my major concerns is the improper-payment error rate. And the chart here, the red shows the error rate. And soaring off the charts is the error rate for Earned Income Tax Credit, and that is overseen by IRS. So it's about 25 percent error rate in the Earned Income Tax Credit area. That's astounding.

A quarter of these improper payments are done through, again, error. The error rate is less than in the health care. That's the only thing, I guess, we could say good about, again, the huge amount of dollars going out from that area.

So IRS—and we've asked them to join us today, talk about their progress, or lack of progress, where they are in trying to get this huge error rate under control.

There are many examples, and I'll put some of them in the record. I won't cover all of them today. But, for example, if you want to go back to health care, CMS has paid individuals who are incarcerated in correctional facilities, so individuals in prison, behind bars, who are generally not eligible for healthcare benefits, they paid some $33 million between 2009 and 2011 to people behind bars. That's just the Medicare program.

If we look at some of the other areas where money is going out the door, in my State, a mother of three with a sixth-grade education defrauded the Federal Government out of at least $3 million with an identity-theft tax fraud scheme. She was caught because she announced on her Facebook page that she was, "the queen of IRS tax fraud." And I've also conducted hearings on the issue of identity theft and tax fraud that occurs through that scheme.

Improper payments are one of the most important areas in our committee's jurisdiction and one of which Congress has been very active. It's not like Congress hasn't acted on the issue of improper payments.

Now, listen to this. Twelve years ago, we passed the Improper Payments Information Act, which requires agencies to do basic reporting to the White House Office of Management and Budget to address the so-called improper payments, which included overpayments, underpayments, payments to the wrong individuals, and payments where there's no documentation. That's 12 years ago.

Four years ago, we passed the Improper Payments Elimination and Recovery Act, which requires agencies to produce plans to reduce the payment errors and attempt to recoup improper paid funds.

Two years ago, we passed the Improper Payments Elimination and Recovery Improvement Act, which created a Do Not Pay initiative to prevent fraud and payments to deceased individuals and strengthen agencies' abilities to recover improperly paid taxpayer dollars.

In fiscal year 2013, the total estimated improper payments were over $105 billion, according to the GAO's review of agency reports. So, today, we're going to hear from GAO and OMB. Unfortunately, the picture hasn't gotten much better, even with the passage of a number of laws that I cited.

The Department of Defense, let's talk about them for a second. While DOD does a report and they have found that a relatively small number of improper payments are made, it's important to note that GAO's total improper-payments figure does not include the Department of Defense. GAO has grave reservations even about DOD's ability to track and accurately report its improper payments.

Now, back to Medicare and Medicaid and CMS, which is responsible, also, for many high-error programs, including the program with the highest amount of improper payments, and that's Medicare Fee-for-Service. In fiscal year 2013, roughly 10 percent, or $36 billion, of payments were made by Medicare Fee-for-Service, and those were improper payments that were made.

The IRS, again, administers the Earned Income Tax Credit. They do have one of the highest rates, as I said, about 25 percent, and the second-highest number of improper payments in total dollars—

again, a smaller number of dollars but a higher error rate. Their improper payments were $14.5 billion in last fiscal year.

IRS also faces the grappling problem with increased identity theft, and I mentioned that before. And, again, the estimates we have from IRS indicate that that could run as high as $21 billion in fraudulent tax returns through 2017.

Finally, I am pleased to see all of our witnesses, particularly pleased to see IRS Commissioner Koskinen. I had actually invited Debra Holland, the head of IRS Wage and Investment Division, to testify today. Mr. Koskinen, who heads IRS, has agreed to come at his own volition, and pleased to have him here.

I may, in fact, call Debra Holland back; want to put her and the agency on notice. And while I'm glad he's here, we'll have an opportunity to question him, but I may, again, continue this hearing with her at a future date. And given the Commissioner's broad responsibility, he does open himself to questions not only about this but a whole host of IRS issues that have been before this committee.

So I look forward to hearing from IRS, CMS, GAO, OMB on how best we can tackle this problem that seems to be eliminating resolution and not getting better. In fact, the dollars are very concerning.

So, with that opening comment, I'll yield to the gentleman from Virginia, Mr. Connolly.

Mr. CONNOLLY. I thank my friend.

Before I start, if the chairman of the full committee has an opening statement, I would certainly defer to him.

Mr. MICA. He does. And we can, with your permission——

Mr. CONNOLLY. I would defer to the chairman.

Mr. MICA. He came in late. And we're going to recognize Mr. Issa, the chairman of the full committee.

Mr. ISSA. Well, thank you, Mr. Connolly.

Commissioner, welcome.

Ms. Davis, I want to signal you out for an excellent report, that I know these take time and they're hard to put together.

What I got out of your report, what I hope the Commissioner is prepared to talk about today, is an amount of money that the American people cannot begin to understand. More than 100 years of giving away a million dollars a day, somehow, you know, causes people—or more than 1,000 years of giving away a million dollars a day, it represents such a large amount of money that nobody can really understood what it would be like to just stack up those bills that long.

But normally when we have these kinds of hearings, everyone comes in and everyone says, if you just gave us more money, we could fix that. Commissioner, consider it said that if we gave you lots more money in addition to the $11 billion budget, $1.8 billion for IT, and 90,000 employees, with more people, you could, in fact, reduce some of this.

One of the challenges is, ultimately, that slide that Chairman Mica put up represents self-inflicted wounds in addition to fraud. There is no reason that earned income credit—basically, people with relatively small—have such a huge amount of fraud. That is a system failure.

CMS and Medicare, which sadly or happily fall under your purview, have, in fact, built a system that is rampant with fraud.

And I'll just briefly remind the committee of something that our committee was very proud of. During the spending of the stimulus, we had authorized the RAT Board and the oversight that went on. And what we discovered was that it wasn't very expensive, a few million dollars, to set up a team that, in fact, was able to find, for example, doctors in Kansas who suddenly made new applications to have offices in Los Angeles and then proceeded to send large amounts of billing to Medicare.

The system that they put in place looked through the data, saw it as a red flag. Discovering that it was an improbability that so many doctors would suddenly be in L.A., they did two things. They called the doctors' offices, and before they got past the receptionist, they were very quickly put to the doctor, who was immediately available to say, "Heck, no, I don't go to California, and I'm not there."

They did the second thing, which is they went to Google Earth and they looked at the building that was being applied for, and they quickly saw that it was a strip mall with no appropriate space for medical offices. They flagged it in realtime and very quickly were able to get to a fraud before large disbursements went out.

That is proven technology that cost a fraction of what the portion of the budget that deals with fraud at the IRS spends. With the passage of the DATA Act, with the help of the ranking member, many of the procedures are in place and sit at Treasury today. These are leverageable technologies that are not about how much money; they're about a willingness to employ them. Money may be needed to scale, but that money certainly would be easy to justify if, in fact, the tools were used.

So what I'm hoping to hear today is not a request for more money, but it's a statement, hopefully by both DOD and IRS, about how you can use modern technology to work smarter, not harder. If there are systems that need to be in place or changes, hopefully you'll be proactive in suggesting them.

But I think, Ms. Davis, you've done a few of these before, so this isn't new work for you. Doing these reports year after year and seeing the numbers substantially similar—$100 billion, $100 billion, $100 billion, and pretty soon it's heading toward a trillion—tells us that they have a system failure.

And, Commissioner, I know you understand that it takes system changes to make large changes, tens or twenties of billions of dollars in changes. Simply plussing up the number of people to do the same work will get you, at best, an incremental increase and very hard to quantify as worth the taxpayers' money.

So, again, I've used my 5 minutes. I've used it to say that I'm hoping this hearing will very much be about the proactive system changes that the largest single areas of improper payments in our government are sitting before us today, the Department of Defense and the IRS, under their offices.

So, Mr. Connolly, I want to thank you.

This is an important hearing. This is one of those hearings that the committee does that is always the same no matter which party sits in the chair.

And I thank the chairman and yield back.

Mr. MICA. I thank you, Chairman Issa.

I now recognize Ranking Member Connolly.

Mr. CONNOLLY. I thank you, both chairmen.

And Chairman Issa makes a good point; this can't be all about money. Money isn't everything when it comes to resources for, you know, fulfilling our missions.

On the other hand, money is not nothing. And this Congress has certainly take the precept that money isn't everything to a very logical but harmful conclusion, especially when it comes to resources for the IRS.

But I remember Ms. Davis, the head of GAO, testifying about the lack of resources at GAO and how there's a return on investment. You know, when we invest in investigative and audit functions, the recovery rate is fairly high. Likewise, when we invest in collection rates and investigative resources for the IRS, there is a return on that investment, which I will return to in just a little bit.

I think it's important to keep both in mind. Money is not the solution to everything, but that isn't the argument for stripping bare the resources so that we can't really do or can't perform our mission and our function.

I want to thank Chairman Mica, especially, for holding the hearing. As Chairman Issa has said, actually, this subject has been, sort of, the purview of this committee for a long time. And we did some really, I thought, thoughtful and groundbreaking work under Todd Platts, who was a previous subcommittee chairman of this committee. Because this is something where it seems to me we can find bipartisan common ground. We're not going to agree on everything, but I think, actually, we might agree certainly on the goals we want to set for ourselves.

It's important to know the Federal Government has reduced the reported government-wide improper-payment rate by 35 percent over the last 4 years, down from 5.42 percent in fiscal 2009 to 3.53 percent in fiscal 2013. That tells me the Federal Government is taking this issue seriously, and I think this committee can take some credit for that.

However, Federal agency improper-payment estimates still add up to at least $106 billion a year as of last year, which is, as the chairman said and the chairman of the subcommittee said, unacceptable by any standard.

And when I think about the magnitude of that, when we talk about numbers involving sequestration over a 10-year period or debt-reduction plans or the big deal, this one item is over a trillion dollars in a 10-year time period and probably more. So the payoff for whittling it down is really important, and it's something I'm glad the Federal Government is taking seriously, but we need to make more progress.

Despite the imposing magnitude of the problem, I'm confident we can bring the figure under control, because, as the chairman showed in that chart, five programs account for $82.9 billion or 78 percent of the amount we're talking about. So it's not something so scattered over thousands of agencies and divisions that it's going to be hard to get our arms around it.

Actually, the chart the subcommittee chairman put up there really kind of gives us the scope of the problem, which means it is something manageable. While no silver bullet exists, a targeted approach, to me, on those concentrated areas, I think, could have high payoff.

Further, having examined the issue in depth, I'm also convinced that when it comes to combating improper payments, we'd be wise to take heed of Ben Franklin, "An ounce of prevention is worth a pound of cure." Antiquated pay-and-chase approaches that seek to recover improper overpayments after the fact are labor-intensive, time-consuming, and they're going to have diminishing returns.

And, finally, successfully bolstering the Federal Government's ability to prevent improper payments requires two to tango, and Congress itself is not off the hook. As Deputy Director Cobert's written testimony notes, there is compelling evidence that investments in administrative resources can significantly decrease the rate of improper payments.

From the Social Security Administration saving taxpayers an estimated $9 in avoided improper payments for every dollar spent on disability review, to the Health Care Fraud and Abuse Control Program recovering $8.10 for every dollar spent on healthcare fraud and abuse investigations over the past 3 years, it's indisputable to me that investing taxpayer dollars wisely, maybe even modestly, into administrative resources can significantly reduce this deficit and yield to much better rules.

And yet, when Members seek to offset amendments in appropriations acts, it's invariably these same valuable administrative tools that are the first in line for the guillotine.

As Commissioner Koskinen can attest, Congress' pennywise and pound-foolish approach sometimes to management is not limited to improper payments. Consider the independent National Taxpayer Advocate 2013 annual report that said, for every dollar appropriated to the IRS in fiscal year 2013, the IRS collected an astounding $255 in legally owed taxes. In fact, the amount of tax money probably left on the table every year uncollected but properly owed far exceeds the dollar amount ascribed to improper payments.

If the chief executive officer of a Fortune 500 company were told that each dollar he or she allocated to his or her company's accounts receivable department could generate many multiples of dollars in return, it's awfully difficult to see how a corporate board would allow that CEO to escape that investment.

However, the revulsion sometimes expressed for the IRS here in Congress is so deeply engrained culturally that, since 2010, we've relinquished a golden opportunity to strengthen enforcement of our laws to catch tax cheats and reduce the deficit by a substantial amount of money. By my rough back-of-the-envelope calculation, we're talking well over $3 trillion, potentially, on the table over a 10-year period. That's a very significant chunk of money. So I believe that investments make a difference.

And I'd also add one other thing, Mr. Chairman, that sometimes gets overlooked because we focus so much on the IRS, but one of the partners here for CMS and the IRS, when we look at Medicare and Medicaid fraud, is the U.S. Attorneys' Office. Last year, for example, the Boston U.S. Attorney's office, if I got my numbers right,

helped identify and recover $3.5 billion in Medicare fraud. That's one U.S. Attorney office; there are 99.

So working with the Department of Justice is also important. We need the U.S. attorney in every office across the United States to take this issue of fraud and waste seriously and make it a priority. Because when we have their support and their active machinery at work, Commissioner Koskinen has a very powerful ally in trying to undertake his mission. So I think that's an important part of this, too, that we want to keep in mind.

With that, Mr. Chairman, I look forward to the testimony of our friends at the panel, and I thank you so much for holding this hearing.

Mr. MICA. Mr. Meadows?

Mr. MEADOWS. Thank you, Mr. Chairman. And I'll keep my remarks very brief.

I'm looking forward to hearing from each one of you, but to give your staff, really, some prep time, what I would ask each of you is, you can satisfy the ranking member, Mr. Connolly, and myself if you can quantitatively give, if we invest more money, where it's actually going to provide a return.

Now, Mr. Koskinen, I've read your testimony, and I've got your return on investment. And as a business guy, that's what I look for, is a return on investment. But I can tell you that I looked at the details, in terms of money spent, number of employees, with regards to the Earned Income Tax Credit, and I see no correlation between employees and money in terms of recoupment.

And so I look forward to you answering in a quantitative—and that's what I'm looking for, each one of you, really a matrix, if we invest another billions dollars, what will we see, in terms of reducing this number.

Because it is systemic; it is not a new problem. And, honestly, as Mr. Connolly said, when we're dealing with these kind of numbers, $106 billion, eventually it adds up to real money.

And so I look forward to hearing from each one of you, and I'll yield the balance of my time back to the chairman.

Mr. MICA. Well, thank you.

Mr. MICA. And thank you for yielding to me for just a second to just put a couple of things in the record.

Now, first of all, this is one of the smallest subcommittees in Congress. We have a very limited, just

over——

Mr. MEADOWS. Mr. Chairman, I would say most efficient.

Mr. MICA. Yeah, but—well, it's smallest in numbers, but let me just say that the savings from this subcommittee are substantial.

I just, you know, I heard this about—this commentary that, just give us more money, that Chairman Issa talked about that. I asked them to pull the report that we did in January of this year on just conference spending. This is on IRS. And I just don't tell these agencies to come in here and give them a hard time and not expect some results.

But in conference spending alone, and through the work of our subcommittee, we reduced expenditures in IRS, from 2010 to 2012, 87 percent in conference spending. They went from $37.6 million in fiscal year 2010 to $4.9 million after we hammered them, again,

about—I have no problem with people going to conferences. I represent one of the best conference areas in the world, Orlando, and some great deals. But the spending was out of control, and you can save money.

So whether it's improper payments, then—and I just pulled the improper payments. Now, something's rotten in Denmark, and something sure as hell is rotten in Washington. If you go from 2008 back to 2004, you've got totals of improper payments, $38 billion, up to 2008, $73. Most of them in the $30s, low $40s. And then you jump from 2009 to last year, $106, $116—these are billion dollars. I just was doing quick math when I finished that. Again, over half a trillion in 5 years, and a relatively small amount.

So something has got to be done to get this under control, period. And we passed laws, and something is not happening. I cited at least four laws that we passed. So this hearing, or as many hearings as we have, we're going to figure out a way to stem this.

And the ranking member just said, over a 10-year period, trillions of dollars. You could balance the Federal budget just by some of this.

Excuse me for getting a little bit intense about this, but this is serious, and we're going to follow it through.

Okay——

Mr. CONNOLLY. Mr. Chairman?

Mr. MICA. Yes.

Mr. CONNOLLY. Could I also just ask unanimous——

Mr. MICA. And, oh, I ask unanimous——

Mr. CONNOLLY. Yeah.

Mr. MICA. —consent to put—that was what I started with—both this little chart—it's not identified, but it's the rate from 2013 to 2009 and then 2004 to 2008 on improper payments.

Without objection, so ordered.

Mr. MICA. And the improper-payments 2013 chart in the record, without objection.

Mr. CONNOLLY. And, Mr. Chairman, I'd just—to be fair to the IRS, I want to note, the four primary legislative requests are not for money. They're actually for expanded authorities, and they list them here. And I would just ask that we enter that into the record.

Mr. MICA. Yes.

Mr. CONNOLLY. I want to be fair. I was talking about more resources, not the IRS.

Mr. MICA. All right.

Mr. CONNOLLY. Thank you, Mr. Chairman.

Mr. MICA. Thank you.

And, without objection, those items will also be noted in the record at this point.

Okay. There being no further opening statements—and Members will have 7 days to submit opening statements for the record, Members that are not here.

And we may be joined by some other members. There's, I think, at least one classified, or possibly two, Member briefings going on simultaneously.

So, without objection, so ordered.

Now, I would like to first introduce our panel of witnesses. We have first, Ms. Beryl Davis is the Director for Financial Manage-

ment and Assurance at the Government Accountability Office; Ms. Beth Cobert is Deputy Director for Management at the Office of Management and Budget; Mr. Mark Easton is Deputy Chief Financial Officer at the Department of State; Mr. Shantanu Agrawal is Deputy Administrator and Director of the Centers for Medicare and Medicaid Services' Center for Program Integrity; and Mr. John Koskinen is the Commissioner of the Internal Revenue Service.

Some of you have been here before; some of you have not. This is an investigative panel. We do swear in all of our witnesses. If you'll stand, please. Raise your right hand.

Do you solemnly swear or affirm that the testimony you're about to give before this subcommittee of Congress is the whole truth and nothing but the truth?

And all of the witnesses, the record will reflect, have answered in the affirmative.

Have a seat. Again, you're welcome.

And, first, I will recognize—and, again, those who haven't been here, we try to limit you not exactly, but we try to keep it close to 5 minutes. If you have written testimony, additional data, through the request of the chair, it will be included in the record.

So, with that, let's recognize and start off with Ms. Beryl Davis, Director of Financial Management and Assurance at the Government Accountability Office.

Welcome, and you're recognized.

WITNESS STATEMENTS

STATEMENT OF BERYL DAVIS

Ms. DAVIS. Chairman Mica, Ranking Member Connolly, Chairman Issa, and Mr. Meadows, I am pleased to be here today to discuss the issue of improper payments in Federal programs.

My testimony will focus on Federal agencies' reported estimates of improper payments, remaining challenges in meeting requirements to estimate and report improper payments, and strategies for reducing improper payments.

In fiscal year 2013, Federal agency estimated improper payments totaled nearly $106 billion. This estimate was attributable to 84 programs spread among 18 agencies. The five programs with the highest dollar amounts accounted for almost $83 billion or 78 percent of the government-wide total.

This same year, OMB reported a government-wide improper-payment error rate of 3.5 percent of total program outlays when including DOD's Defense Finance and Accounting Service Commercial Pay program. However, in May 2013, GAO reported major deficiencies in DOD's process for estimating improper payments for this program in fiscal year 2012. Consequently, the 2013 estimate may not be reliable. When excluding the DFAS Commercial Pay program, the reported government-wide error rate was 4 percent in 2013, compared to a revised estimate of 4.3 percent the year before.

In fiscal year 2013, Federal agencies reported improper-payment error rates for seven risk-susceptible programs that exceeded 10 percent. These seven programs accounted for more than 50 percent of the government-wide estimate.

Federal agencies have continued to identify new programs as risk-susceptible and report improper-payment amounts. A net of 10 additional programs were added by OMB in the 2013 government-wide estimate when compared to the prior year. The most notable addition was the Department of Education's Direct Loan Program, with an estimate of approximately $1.1 billion.

Despite progress in reporting improper payments, in GAO's fiscal year 2013 audit of the Financial Report of the United States Government, we reported the issue of improper payments as a material weakness in internal control because the Federal Government is unable to determine the full extent to which improper payments occur and reasonably assure that appropriate actions are taken to reduce them.

We found that four Federal agencies have not yet reported estimates for four risk-susceptible programs. For example, HHS has cited statutory limitations for its State-administered Temporary Assistance for Needy Families program which kept it from requiring State assistance in developing an improper-payment estimate. In addition, two programs that did report estimates were not included in the government-wide total because their estimation methodologies were not approved by OMB.

As GAO has previously reported, there are a number of strategies that can help agencies to reduce improper payments, including analyzing the root causes of improper payments and designing and implementing effective preventive and detective controls.

Regarding root causes, identifying and analyzing the root causes of improper payments is key to developing corrective actions. While some agencies reported the causes of improper payments last year in three general categories, as required by OMB, more robust root-cause analysis may help to identify needed corrective actions and thus assist in developing and implementing effective preventive controls.

Regarding preventive controls, strong preventive controls serve as the frontline defense against improper payments. This can increase public confidence and avoid the pay-and-chase aspects of recovering improper payments.

Preventive controls involve a variety of activities, such as upfront validation of eligibility through data shared among agencies. One example of such data-sharing is agencies' use of the Do Not Pay initiative. Other preventive controls include predictive analytic technologies to identify patterns of high risk for fraudulent activities, program design reviews and refinements, and training programs for providers, staff, and beneficiaries.

Finally, regarding detective controls, agencies need effective detection techniques to quickly identify and recover improper payments that do occur. Detection techniques include data mining and recovery auditing. For example, in fiscal year 2013, the Medicare Fee-for-Service Recovery Audit Program reported recovering $3.7 billion.

Another area for further exploration is a broader use of incentives for States to implement effective preventive and detection controls in State-administered programs. Designed and implemented effectively, these strategies could help advance the Federal Government's efforts to reduce improper payments.

Chairman Mica, Ranking Member Connolly, Chairman Issa, and Mr. Meadows, thank you very much for the opportunity to be here. This completes my prepared statement, and I'd be happy to answer any questions.

Mr. MICA. Thank you.

[Prepared statement of Ms. Davis follows:]

United States Government Accountability Office

Testimony

Before the Subcommittee on Government Operations, Committee on Oversight and Government Reform, House of Representatives

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IMPROPER PAYMENTS

Government-Wide Estimates and Reduction Strategies

Statement of Beryl H. Davis, Director
Financial Management and Assurance

GAO-14-737T

GAO Highlights

Highlights of GAO-14-737T, a testimony before the Subcommittee on Government Operations, Committee on Oversight and Government Reform, House of Representatives

Why GAO Did This Study

Over the past decade, GAO has issued numerous reports and testimonies highlighting improper payment issues across the federal government as well as at specific agencies. The Improper Payments Information Act of 2002, as amended by the Improper Payments Elimination and Recovery Act of 2010 and the Improper Payments Elimination and Recovery Improvement Act of 2012, requires federal executive branch agencies to (1) review all programs and activities, (2) identify those that may be susceptible to significant improper payments, (3) estimate the annual amount of improper payments for those programs and activities, (4) implement actions to reduce improper payments and set reduction targets, and (5) report on the results of addressing the foregoing requirements. In general, reported improper payment estimates include payments that should not have been made, were made in the incorrect amount, or were not supported by sufficient documentation.

This testimony addresses (1) federal agencies' reported estimates of improper payments, (2) remaining challenges in meeting current requirements to estimate and report improper payments, and (3) strategies for reducing improper payments. This testimony is primarily based on GAO's fiscal year 2013 audit of the *Financial Report of the United States Government* and prior GAO reports related to improper payments issued over the past 3 years. The testimony also includes improper payment information recently presented in federal agencies' fiscal year 2013 financial reports.

View GAO-14-737T. For more information, contact Beryl H. Davis at (202) 512-2623 or davisbh@gao.gov.

July 9, 2014

IMPROPER PAYMENTS

Government-Wide Estimates and Reduction Strategies

What GAO Found

Federal agencies reported an estimated $105.8 billion in improper payments in fiscal year 2013, a decrease from the prior year revised estimate of $107.1 billion. The fiscal year 2013 estimate was attributable to 84 programs spread among 18 agencies. The specific programs included in the government-wide estimate may change from year to year. For example, with Office of Management and Budget (OMB) approval, an agency can obtain relief from estimating improper payments if the agency has reported improper payments under a certain threshold for at least 2 consecutive years. A net of 10 additional programs were added to the government-wide estimate by OMB in fiscal year 2013 when compared to fiscal year 2012.

For fiscal year 2013, GAO identified the federal government's inability to determine the full extent to which improper payments occur and reasonably assure that appropriate actions are taken to reduce them as a material weakness in internal control. In addition, existing internal control weaknesses at the agency level continued to increase the risk of improper payments occurring. In fiscal year 2013, four agencies did not report estimates for four risk-susceptible programs, including the Department of Health and Human Services' (HHS) Temporary Assistance for Needy Families (TANF) program. HHS cited a statutory barrier that prevents it from requiring states to estimate improper payments for TANF. Estimates reported for two programs were also not included in the government-wide total because their estimation methodologies were not approved by OMB. Further, inspectors general reported deficiencies related to compliance with criteria listed in the Improper Payments Elimination and Recovery Act of 2010 for fiscal year 2013, such as the use of estimation methodologies that were not statistically valid.

As GAO has previously found, a number of strategies across government, some of which are currently under way, could help to reduce improper payments. For example

- Analysis of the root causes of improper payments can help agencies target effective corrective actions. Some agencies reported root causes of improper payments using three error categories required by OMB (documentation and administrative, authentication and medical necessity, and verification). However, because the three categories are general, more detailed analysis to understand the root causes could help agencies identify and implement more effective corrective actions.
- Designing and implementing strong preventive controls can help defend against improper payments, increasing public confidence and avoiding the difficult "pay and chase" aspects of recovering improper payments. Preventive controls involve activities such as up-front validation of eligibility through data sharing, predictive analytic tests, and training programs.
- Implementing effective detection techniques to quickly identify and recover improper payments after they have been made is also important to a successful reduction strategy. Detection activities include data mining and recovery audits. Another area for further exploration is the broader use of incentives to encourage and support states in efforts to implement effective preventive and detective controls in state-administered programs.

Chairman Mica, Ranking Member Connolly, and Members of the Subcommittee:

Thank you for the opportunity to be here today to discuss the issue of improper payments in federal programs and activities, including efforts by federal agencies to identify and reduce improper payments.[1] As the steward of taxpayer dollars, the federal government is accountable for how its agencies and grantees spend hundreds of billions of taxpayer dollars annually, including safeguarding those expenditures against improper payments and establishing mechanisms to recover those funds when overpayments occur. It is important to note that reported improper payment estimates may or may not represent a loss to the government. For example, errors consisting of insufficient or lack of documentation for a payment are included in the improper payment estimates. Over the past decade, we have issued numerous reports and testimonies highlighting improper payment issues across the federal government as well as at specific agencies.[2]

My testimony today will focus on

- federal agencies' reported estimates of improper payments,
- remaining challenges in meeting current requirements to estimate and report improper payments, and
- strategies for reducing improper payments.

In preparing this statement, we primarily drew upon our February 2014 report on the fiscal year 2013 audit of the *Financial Report of the United States Government*,[3] as well as our other products dealing with improper

[1]An improper payment is defined by statute as any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements. It includes any payment to an ineligible recipient, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), and any payment that does not account for credit for applicable discounts. Office of Management and Budget guidance also instructs agencies to report as improper payments any payments for which insufficient or no documentation was found.

[2]See the Related GAO Products list at the end of this statement for a selection of the products related to these issues.

[3]GAO, *Financial Audit: U.S. Government's Fiscal Years 2013 and 2012 Consolidated Financial Statements*, GAO-14-319R (Washington, D.C.: Feb. 27, 2014).

payments issued over the last 3 years. We are also including improper payment information recently presented in federal agencies' fiscal year 2013 performance and accountability reports (PAR) and agency financial reports (AFR).[4] The GAO reports cited in this statement each provide detailed information on our scope and methodology. The work we performed upon which this statement is based was conducted in accordance with generally accepted government auditing standards. 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.

Background

The Improper Payments Information Act of 2002 (IPIA)—as amended by the Improper Payments Elimination and Recovery Act of 2010 (IPERA) and the Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA)[5]—requires federal executive branch agencies to (1) review all programs and activities, (2) identify those that may be susceptible to significant improper payments,[6] (3) estimate the annual amount of improper payments for those programs and activities, (4) implement actions to reduce improper payments and set reduction targets, and (5) report on the results of addressing the foregoing requirements. IPERA also established a requirement for agency inspectors general (IG) to report annually on agencies' compliance with criteria listed in IPERA. Under Office of Management and Budget (OMB) implementing guidance, these reports should be completed within 120

[4]An AFR is a report on an agency's end of fiscal year financial position that includes, but is not limited to, financial statements, notes on the financial statements, and a report of the independent auditors. A PAR is an AFR combined with an annual performance report, which includes information on an agency's efforts to achieve goals during the past fiscal year.

[5]IPIA, Pub. L. No. 107-300, 116 Stat. 2350 (Nov. 26, 2002), *as amended by* IPERA, Pub. L. No. 111-204, 124 Stat. 2224 (July 22, 2010), *and* IPERIA, Pub. L. No. 112-248, 126 Stat. 2390 (Jan. 10, 2013), *and codified as amended at* 31 U.S.C. § 3321 note.

[6]For fiscal year 2014 and beyond, "significant improper payments" is defined as gross annual improper payments in the program exceeding (1) both 1.5 percent of program outlays and $10 million of all program or activity payments during the fiscal year reported or (2) $100 million (regardless of the improper payment error rate).

days of the publication of the federal agencies' annual PARs or AFRs.[7] IPERIA also enacted into law a Do Not Pay (DNP) initiative, elements of which were already being developed under executive branch authority. DNP is a web-based, centralized data-matching service that allows agencies to review multiple databases to determine a recipient's award or payment eligibility prior to making payments. In addition to the laws and guidance noted above, the Disaster Relief Appropriations Act of 2013 requires that all funding received under the act be deemed susceptible to significant improper payments and consequently requires agencies to estimate improper payments, implement corrective actions, and report on their results for these funds.[8]

OMB continues to play a key role in the oversight of government-wide improper payments. OMB has set a goal of reaching a government-wide improper payment error rate of 3 percent or less by the end of fiscal year 2016. Further, OMB has established guidance for federal agencies on reporting, reducing, and recovering improper payments as required by IPIA and IPERA and on protecting privacy while reducing improper payments with the DNP initiative.[9] IPERIA requires that OMB issue guidance to agencies for improving estimates of improper payments. OMB has reported that it plans to revise its guidance related to improper payments.

[7]Generally, agencies are required to issue their PARs or AFRs by November 15. Fiscal year 2013 marked the third year for which IGs were required to issue an annual report on agencies' compliance with criteria listed in IPERA.

[8]Pub. L. No. 113-2, div. A, § 904(b) 127 Stat. 4 (Jan. 29, 2013).

[9]Office of Management and Budget, Revised, *Financial Reporting Requirements*, OMB Circular No. A-136 (Oct. 21, 2013); *Protecting Privacy while Reducing Improper Payments with the Do Not Pay Initiative*, OMB Memorandum M-13-20 (Washington, D.C.: Aug. 16, 2013); *Issuance of Revised Parts I and II to Appendix C of OMB Circular A-123*, OMB Memorandum M-11-16 (Washington, D.C.: Apr. 14, 2011); *Increasing Efforts to Recapture Improper Payments by Intensifying and Expanding Payment Recapture Audits*, OMB Memorandum M-11-04 (Washington, D.C.: Nov. 16, 2010); and *Issuance of Part III to OMB Circular A-123, Appendix C*, OMB Memorandum M-10-13 (Washington, D.C.: Mar. 22, 2010).

OMB and Agencies Reported Estimates of Improper Payments

Federal agency improper payment estimates totaled $105.8 billion in fiscal year 2013,[10] a decrease of $1.3 billion from the prior year's revised estimate of $107.1 billion.[11] The decrease in the fiscal year 2013 estimate is attributed primarily to a decrease in program outlays for the Department of Labor's (DOL) Unemployment Insurance program and decreases in reported error rates for fiscal year 2013 for the Department of Health and Human Services' (HHS) Medicaid and Medicare Advantage (Part C) programs. The $105.8 billion in estimated federal improper payments reported for fiscal year 2013 was attributable to 84 programs spread among 18 agencies. Five of these 84 programs account for most of the $105.8 billion of reported improper payments. Specifically, these five programs accounted for about $82.9 billion or 78 percent of the total estimated improper payments agencies reported for fiscal year 2013. Table 1 lists the five programs with the highest reported improper payment estimates for fiscal year 2013.

Table 1: Improper Payment Dollar Estimates: Five Programs with the Highest Reported Amounts in Fiscal Year 2013

		Fiscal year 2013 reported improper payment estimates	
Program	**Agency**	**Dollars (in billions)**	**Error rate (percentage of outlays)**
Medicare Fee-for-Service	HHS	$36.0	10.1
Earned Income Tax Credit	Department of the Treasury	14.5	24.0
Medicaid	HHS	14.4	5.8
Medicare Advantage (Part C)	HHS	11.8	9.5
Unemployment Insurance	DOL	6.2	9.3

Source: GAO summary of agencies' data. | GAO-14-737T

[10]This $105.8 billion estimate does not include the Department of Defense's Defense Finance and Accounting Service Commercial Pay program because of concerns regarding the reliability of its improper payment estimate, which we discuss later in this statement. The government-wide improper payment estimate for fiscal year 2013 including this program is $105.9 billion.

[11]In their fiscal year 2013 PARs and AFRs, three federal agencies updated their fiscal year 2012 improper payment estimates to reflect changes since issuance of their fiscal year 2012 PARs and AFRs. These updates decreased the government-wide improper payment estimate for fiscal year 2012 from $107.7 billion to $107.1 billion and from 4.4 percent of program outlays to 4.3 percent.

OMB reported a government-wide improper payment error rate of 3.5 percent of program outlays in fiscal year 2013 when including the Department of Defense's (DOD) Defense Finance and Accounting Service (DFAS) Commercial Pay program,[12] a decrease from 3.7 percent in fiscal year 2012. When excluding the DFAS Commercial Pay program, the reported government-wide error rate was 4.0 percent of program outlays in fiscal year 2013 compared to the revised 4.3 percent reported in fiscal year 2012. In May 2013, we reported on major deficiencies in DOD's process for estimating fiscal year 2012 improper payments in the DFAS Commercial Pay program and recommended that DOD (1) develop key quality assurance procedures to ensure the completeness and accuracy of sampled populations and (2) revise its sampling procedures to meet OMB guidance and generally accepted statistical standards and produce a statistically valid error rate and dollar estimate with appropriate confidence intervals.[13] According to its fiscal year 2013 AFR, DOD is reevaluating its sampling methodology for fiscal year 2014 for the DFAS Commercial Pay program based on our recommendations. Consequently, the fiscal year 2013 improper payment estimate for the DFAS Commercial Pay program may not be reliable.

Additionally, in fiscal year 2013, federal agencies reported improper payment error rates for seven risk-susceptible programs—accounting for more than 50 percent of the government-wide improper payment estimate—that exceeded 10 percent. As shown in table 2, the seven programs with error rates exceeding 10 percent ranged from 10.1 percent to 25.3 percent. Under IPERA, an agency reporting an improper payment rate of 10 percent or greater for any risk-susceptible program or activity must submit a plan to Congress describing the actions that the agency will take to reduce improper payment rates below 10 percent.

[12]DFAS is responsible for providing professional, financial, and accounting services to DOD and other federal agencies. It delivers mission-essential payroll, contract and vendor pay, and accounting services. For fiscal year 2013, DOD reported outlays of approximately $353 billion for the DFAS Commercial Pay program.

[13]GAO, *DOD Financial Management: Significant Improvements Needed in Efforts to Address Improper Payment Requirements*, GAO-13-227 (Washington, D.C.: May 13, 2013).

Table 2: Improper Payment Error Rates: Seven Programs with Error Rates Exceeding 10 Percent in Fiscal Year 2013

		Fiscal year 2013 reported improper payment estimates	
Program	**Agency**	**Error rate (percentage of outlays)**	**Dollars (in millions)**
School Breakfast	Department of Agriculture (USDA)	25.3	$831.0
Earned Income Tax Credit	Department of the Treasury	24.0	14,500.0
Disaster Assistance Loans	Small Business Administration (SBA)	18.4	121.1
State Home Per Diem Grants	Department of Veterans Affairs	15.9	135.2
School Lunch	USDA	15.7	1,774.0
Contract Disbursements	SBA	11.6	14.1
Medicare Fee-for-Service	HHS	10.1	36,033.0

Source: GAO summary of agencies' data. | GAO-14-737T

Since the implementation of IPIA in 2004, federal agencies have continued to identify new programs or activities as risk susceptible and to report estimated improper payment amounts. Federal agencies have also identified programs or activities that they have determined to no longer be risk susceptible and therefore did not report improper payment estimates for these programs. For example, with OMB approval an agency can obtain relief from estimating improper payments if the agency has reported improper payments under the threshold for significant improper payments at least 2 consecutive years. Consequently, the specific programs included in the government-wide improper payment estimate may change from year to year. For example, a net of 10 additional programs were added to the government-wide estimate by OMB in fiscal year 2013 when compared to fiscal year 2012.[14] Most notably, the Department of Education's improper payment estimate for the Direct Loan program, approximately $1.1 billion, was included in the government-wide improper payment estimate for the first time in fiscal year 2013. We view

[14]This total includes DOD's DFAS Commercial Pay program.

these agencies' efforts as a positive step toward increasing the transparency of the magnitude of improper payments.

In addition, agencies have continued efforts to recover improper payments, for example through recovery audits.[15] OMB reported that government-wide, agencies recovered over $22 billion in overpayments through recovery audits and other methods in fiscal year 2013.

Challenges in Achieving Complete and Accurate Reporting of Improper Payments

In our fiscal year 2013 audit of the *Financial Report of the United States Government*, we reported the issue of improper payments as a material weakness in internal control because the federal government is unable to determine the full extent to which improper payments occur and reasonably assure that appropriate actions are taken to reduce them.[16] At the agency level, we also found that existing internal control weaknesses—such as financial system limitations and information system control weaknesses—heighten the risk of improper payments occurring.

We found that not all agencies have developed improper payment estimates for all of the programs and activities they identified as susceptible to significant improper payments. Specifically, four federal agencies did not report fiscal year 2013 estimated improper payment amounts for four risk-susceptible programs.[17] For example, HHS's fiscal year 2013 reporting cited statutory limitations for its state-administered Temporary Assistance for Needy Families (TANF) program,[18] which prohibited it from requiring states to participate in developing an improper payment estimate for the TANF program. Despite these limitations, HHS

[15]According to OMB guidance, a recovery audit is a review and analysis of an agency's or program's accounting and financial records, supporting documentation, and other pertinent information supporting its payments that is specifically designed to identify overpayments.

[16]GAO-14-319R.

[17]The four risk-susceptible programs that did not report a required improper payments estimate for fiscal year 2013 were HHS's Temporary Assistance for Needy Families program, the Department of Agriculture's (USDA) Loan Deficiency Payments, the Federal Communications Commission's Universal Service Fund – Lifeline program, and the National Science Foundation's Research and Related Activities and Education and Human Resources program.

[18]The term state-administered refers to federal programs that are managed on a day-to-day basis at the state level to carry out program objectives.

reported that the agency has taken actions to assist states in reducing improper payments, such as providing guidance related to appropriate uses of TANF program funds. For fiscal year 2013, the TANF program reported outlays of about $16.5 billion.

In addition, two programs that reported estimates in fiscal year 2013 were not included in the government-wide totals because their estimation methodologies were not approved by OMB. The two excluded programs were the Department of Transportation's High-Speed Intercity Passenger Rail program, with fiscal year 2013 outlays of $2.3 billion, and the Railroad Retirement Board's Railroad Unemployment Insurance program, with fiscal year 2013 outlays of $119.2 million.

Compliance with statutory requirements is another challenge for some federal agencies. For fiscal year 2013, two agency auditors reported on compliance issues with IPIA and IPERA as part of their 2013 financial statement audits. Specifically, auditors of the Department of Agriculture (USDA) reported noncompliance with the requirements of IPERA regarding the design of program internal controls related to improper payments. HHS auditors reported that, as previously noted, HHS did not report an improper payment estimate for its TANF program for fiscal year 2013. In addition to noncompliance reported in financial statement audits, various IGs reported deficiencies related to compliance with the criteria listed in IPERA for fiscal year 2013 at their respective federal agencies, including risk-susceptible programs that did not have reported improper payment estimates, estimation methodologies that were not statistically valid, and risk assessments that may not accurately assess the risk of improper payment.

As reported in our March 2014 update to items identified in our annual reports on fragmentation, overlap, and duplication, to determine the full extent of improper payments government-wide and to more effectively recover and reduce them, continued agency attention is needed to (1) identify programs susceptible to improper payments, (2) develop reliable improper payment estimation methodologies, (3) report on improper payments as required, and (4) implement effective corrective actions based on root cause analysis.[19]

[19]GAO, *General Government: Governmentwide Improper Payments*, accessed June 28, 2014, http://gao.gov/duplication/action_tracker/Governmentwide_Improper_Payments.

Strategies to Reduce Improper Payments

As previously reported, there are a number of strategies that can help agencies in reducing improper payments, including analyzing the root causes of improper payments and implementing effective preventive and detective controls.[20] Designed and implemented effectively, these strategies could help advance the federal government's efforts to reduce improper payments.

Identifying and Analyzing Root Causes of Improper Payments

Agencies cited a number of causes for the estimated $105.8 billion in reported improper payment estimates for fiscal year 2013, including insufficient documentation, incorrect calculations, and duplicate payments. According to OMB guidance,[21] agencies are required to classify the root causes of estimated improper payments into three general categories for reporting purposes: (1) documentation and administrative errors, (2) authentication and medical necessity errors, and (3) verification errors.[22] While some agencies reported the causes of improper payments for their respective programs in their fiscal year 2013 financial reports using these categories, a more detailed analysis beyond these general categories regarding the root causes can help agencies to identify and implement more effective preventive, detective, and corrective actions in the various programs. For example, in its fiscal year 2013 AFR, HHS reported diagnosis coding errors as a root cause of improper payments in its Medicaid program and cited corrective actions

[20]GAO, *Improper Payments: Moving Forward with Governmentwide Reduction Strategies.* GAO-12-405T (Washington, D.C.: Feb. 7, 2012).

[21]Office of Management and Budget, *Financial Reporting Requirements*, Circular No. A-136 Revised (Oct. 21, 2013), and *Issuance of Part III to OMB Circular A-123, Appendix C*, OMB Memorandum M-10-13 (Washington, D.C.: Mar. 22, 2010).

[22]OMB defines these error types as: Documentation and Administrative Errors - Errors caused by the absence of supporting documentation necessary to verify the accuracy of a payment or errors caused by incorrect inputting, classifying, or processing of applications or payments by a relevant Federal agency, State agency, or third party who is not the beneficiary; Authentication and Medical Necessity Errors - Errors caused by an inability to authenticate eligibility criteria through third-party databases or other resources because no databases or other resources exist, or providing a service that was not medically necessary given the patient's condition; and Verification Errors - Errors caused by the failure or inability to verify recipient information, including earnings, income, assets, or work status, even though verifying information does exist in third-party databases or other resources (in this situation, as contrasted with "authentication" errors, the "inability" to verify may arise due to legal or other restrictions that effectively deny access to an existing database or resource), or errors due to beneficiaries failing to report correct information to an agency.

related to provider communication and education. OMB has reported plans to develop more granular categories of improper payments in an upcoming revision to its guidance.

Designing and Implementing Effective Preventive Controls to Avoid Improper Payments

Implementing strong preventive controls can serve as the frontline defense against improper payments. Proactively preventing improper payments increases public confidence in the administration of benefit programs and avoids the difficulties associated with the "pay and chase" aspects of recovering overpayments.[23] Many agencies and programs are in the process of implementing preventive controls to avoid improper payments, including overpayments and underpayments.[24] Preventive controls may involve a variety of activities such as up-front validation of eligibility, predictive analytic tests, and training programs. Further, addressing program design issues that are a factor in causing improper payments is an effective preventive strategy to be considered. The following are examples of preventive strategies, some of which are currently under way.

Up-front eligibility validation through data sharing. Data sharing allows entities that make payments—to contractors, vendors, participants in benefit programs, and others—to compare information from different sources to help ensure that payments are appropriate. When effectively implemented, data sharing can be particularly useful in confirming initial or continuing eligibility of participants in benefit programs and in identifying improper payments that have already been made. Analyses and reporting on the extent to which agencies are participating in data-sharing activities, and additional data-sharing efforts that agencies are currently pursuing or would like to pursue can help to advance the federal government's efforts to reduce improper payments.

[23]"Pay and chase" refers to the labor-intensive and time-consuming practice of trying to recover overpayments once they have already been made rather than preventing improper payments in the first place.

[24]Underpayments are also included in the total improper payment estimates because, according to OMB guidance, the portion of all amounts paid improperly should be included when calculating a program's annual improper payment amount. For example, according to the guidance, if a $100 payment was owed, but the agency erroneously paid $90, then $10 should be considered an improper payment.

One example of data sharing is agencies' use of the Do Not Pay (DNP) initiative. DNP is a web-based, centralized data-matching service that allows agencies to review multiple databases to determine a recipient's award or payment eligibility prior to making payments. IPERIA requires entities to review prepayment and preaward procedures and ensure a thorough review of available databases to determine program or award eligibility before the release of any federal funds. IPERIA lists five databases that should be included in the DNP initiative and allows for the inclusion of other databases designated by OMB in consultation with the appropriate agencies.[25] In August 2013, the Director of OMB issued Memorandum No. M-13-20 (M-13-20), *Protecting Privacy while Reducing Improper Payments with the Do Not Pay Initiative*. As required by IPERIA, M-13-20 sets forth implementation guidance for the DNP initiative to help ensure that the federal government's efforts to reduce improper payments comply with privacy laws and policies.

Predictive analytic technologies. The analytic technologies used by HHS's Centers for Medicare & Medicaid Services (CMS) are examples of preventive techniques that may be useful for other programs to consider. The Small Business Jobs Act of 2010 requires CMS to use predictive modeling and other analytic techniques—known as predictive analytic technologies—both to identify and to prevent improper payments under the Medicare Fee-for-Service program.[26] These predictive analytic technologies are to be used to analyze and identify Medicare provider networks, billing patterns, and beneficiary utilization patterns and detect those that represent a high risk of fraudulent activity. Through such analysis, unusual or suspicious patterns or abnormalities can be identified and used to prioritize additional review of suspicious transactions before payment is made.

Training programs for providers, staff, and beneficiaries. Training can be a key element in any effort to prevent improper payments from occurring. This can include both training staff on how to prevent and

[25]The five databases specifically listed in IPERIA are (1) Social Security Administration's Death Master File, (2) General Services Administration's Excluded Parties List System, (3) Department of the Treasury's Debt Check Database, (4) HHS IG's List of Excluded Individuals/Entities, and (5) Department of Housing and Urban Development's (HUD) Credit Alert System or Credit Alert Interactive Voice Response System. According to the DNP website, only the first four of these databases are currently available.

[26]Pub. L. No. 111-240, § 4241 (Sept. 27, 2010).

detect improper payments and training providers or beneficiaries on program requirements. For example, in its fiscal year 2013 AFR, HHS reported that it has offered training through its Medicaid Integrity Institute to over 4,000 state employees and officials from fiscal years 2008 through 2013.

Program design review and refinement. To the extent that provider enrollment and eligibility verification problems are identified as a significant root cause in a specific program, agencies may look to establish enhanced controls in this area. For example, CMS has taken steps to strengthen standards and procedures for Medicare provider enrollment to help reduce the risk of providers intent on defrauding or abusing the program.[27] Further, exploring whether certain complex or inconsistent program requirements—such as eligibility criteria and requirements for provider enrollment—contribute to improper payments may lend insight to developing effective strategies for enhancing compliance and may identify opportunities for streamlining or changing eligibility or other program requirements.

Implementing Effective Detective Controls to Identify and Recover Overpayments

Although strong preventive controls remain the frontline defense against improper payments, effective detection techniques can help to quickly identify and recover those overpayments that do occur. Detection activities play a significant role not only in identifying improper payments but also in providing data on why these payments were made and, in turn, highlighting areas that need strengthened prevention controls. The following are examples of key detection techniques.

Data mining. Data mining is a computer-based control activity that analyzes diverse data for relationships that have not previously been discovered. The central repository of data commonly used to perform data mining is called a data warehouse. Data warehouses store tables of historical and current information that are logically grouped. As a tool in managing improper payments, applying data mining to a data warehouse allows an organization to efficiently query the system to identify potential improper payments, such as multiple payments for an individual invoice to an individual recipient on a certain date, or to the same address. For

[27]GAO, *Medicare: Further Action Could Improve Improper Payment Prevention and Recoupment Efforts*, GAO-14-619T (Washington, D.C.: May 20, 2014).

example, CMS has established One Program Integrity, a web-based portal intended to provide CMS staff and contractors with a single source of access to Medicare and other data needed to help detect improper payments as well as tools for analyzing those data.

Recovery auditing. While internal control should be maintained to help prevent improper payments, recovery auditing is used to identify and recover overpayments. IPERA requires agencies to conduct recovery audits, if cost effective, for each program or activity that expends $1 million or more annually. In its fiscal year 2013 AFR, HHS reported that the Medicare Fee-for-Service recovery audit program identified approximately $4.2 billion and recovered $3.7 billion in overpayments by the end of the fiscal year. Medicare recovery audit contractors are paid a contingency fee based on both the percentage of overpayments collected and underpayments identified.

It is important to note that some agencies have reported statutory or regulatory barriers that affect their ability to pursue recovery auditing. For example, in its fiscal year 2013 AFR, USDA reported that Section 281 of the Department of Agriculture Reorganization Act of 1994 precluded the use of recovery auditing techniques because Section 281 provides that 90 days after the decision of a state, a county, or an area committee is final, no action may be taken to recover the amounts found to have been erroneously disbursed as a result of the decision unless the participant had reason to believe that the decision was erroneous.[28] This statute is commonly referred to as the Finality Rule, and according to USDA, it affects the Commodity Credit Corporation's ability to recover improper payments.

Federal-state incentives. Another area for further exploration is the broader use of incentives for states to implement effective preventive and detective controls.[29] Agencies have applied limited incentives and penalties for encouraging improved state administration to reduce

[28]Pub. L. No. 103-354, § 281, 108 Stat. 3178, 3233 (Oct. 13, 1994), *classified, as amended, at* 7 U.S.C. § 7001.

[29]IPERA allows agencies to use up to 25 percent of funds recovered, net of recovery costs, under a payment recapture audit program, including providing a portion of funding to state and local governments.

improper payments. Incentives and penalties can be helpful to create management reform and to ensure adherence to performance standards.

Chairman Mica, Ranking Member Connolly, and Members of the Subcommittee, this completes my prepared statement. I would be pleased to respond to any questions that you or other members of the subcommittee may have at this time.

GAO Contact and Staff Acknowledgments

For more information regarding this testimony, please contact Beryl H. Davis, Director, Financial Management and Assurance, at (202) 512-2623 or by e-mail at davisbh@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this testimony included Phillip McIntyre (Assistant Director), James Healy, and Ricky A. Perry, Jr.

Related GAO Products

Medicare Fraud: Further Actions Needed to Address Fraud, Waste, and Abuse. GAO-14-712T. Washington, D.C.: June 25, 2014.

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Mr. MICA. And we'll have questions when we've heard from all the witnesses.

We recognize now Ms. Beth Cobert, and she is the Deputy Director for Management at OMB.

Welcome, and you're recognized.

STATEMENT OF BETH COBERT

Ms. COBERT. Thank you. Thank you, Chairman Mica, Ranking Member Connolly, Mr. Meadows, for inviting me today to discuss the Federal Government's efforts to stop improper payments. I appreciate the opportunity to update the subcommittee on this topic.

When the President took office in 2009, improper-payment rates were on the rise, with the fiscal year 2009 rate coming in at 5.42 percent, the highest figure to date. We are pleased to report that, since 2009, the administration, working together with Congress, has significantly reduced improper payments.

As a result of this concerted effort, the government-wide improper-payment rate has dropped steadily for 4 consecutive years, from 5.42 percent in fiscal year 2009 to 3.53 percent in fiscal year 2013. And, as noted, the fiscal year 2013 measure does include DOD commercial payments.

Over the past year, we reduced improper-payment rates in major program areas, including Medicaid, Medicare Advantage Part C, unemployment insurance, the Supplemental Nutrition Assistance Program, Pell grants, and the Social Security Supplemental Security Income program and the Retirement, Survivors, and Disability Income program. Furthermore, agencies recovered more than $22 billion in overpayments through payment recapture audits and other methods.

In programs administered at the State and at the local level, the Federal Government has been working directly with States to ensure that appropriate corrective actions are put in place to reduce improper payments.

In other instances, Federal agencies have implemented innovative techniques to ensure that benefit payments are accurate. For example, the Supplemental Security Income program has been integrating the Access to Financial Institutions, AFI, bank verification process. AFI electronically verifies bank account balances with financial institutions so SSI can ensure that beneficiaries do not exceed program asset thresholds.

While we are pleased to see progress, we acknowledge that more work needs to be done. There are areas where we did not see progress in fiscal year 2013. For these and for all areas, we will continue to work closely with agencies to find the root causes of improper payments and address them.

To build on our progress, we are working on a number of fronts. We are conducting a careful analysis of program-specific corrective actions to identify those with the highest return on investment or potential for substantially reducing improper payments.

We are also focused on leveraging technology and sharing data to address improper payments, as exemplified by the Do Not Pay initiative. Do Not Pay uses data-matching and predictive analytics to prevent improper payments before they occur.

The budget includes proposals to build on congressional and administrative action to further reduce improper payments. The fiscal year 2015 budget includes a number of program integrity proposals aimed at improving government efficiency, which is a core focus of the overall President's management agenda.

For example, the budget strengthens Medicare, Medicaid, and the Children's Health Insurance Program by providing tools and funding to fight fraud, waste, and abuse. It also supports the Internal Revenue Service efforts aimed at improving enforcement of current tax laws and reducing the tax gap.

These proposals will provide additional savings for the government and taxpayers and will support government-wide efforts to improve the management and oversight of Federal resources.

There is compelling evidence that investments in program integrity can significantly decrease the rate of improper payments and recoup many times their initial investments. As was noted earlier, for every dollar spent by the SSA on disability reviews, the government saves an estimated $9 in avoided benefit payments.

To help bolster the value of the Do Not Pay system, the President's fiscal year 2015 budget reproposes providing the Treasury Do Not Pay system access to the SSA full Death Master File, which includes the most timely information available on death information received from State sources.

We look forward to continuing to work with Congress on other matters, including the Improper Payments Agency Cooperation Enhancement Act, IPACE, which includes many administration priorities on sharing data to prevent improper payments.

I'd like to close by emphasizing that stopping improper payments remains a priority for this administration. We have taken an aggressive approach to attacking waste, fraud, and abuse within Federal agencies, and we will continue to seek out new and innovative tools to help us in this fight. While we are proud of the progress we have made, we know there is much more work to be done to improve the accuracy and integrity of Federal payments.

I look forward to continuing to work with this subcommittee and other committees, as well as the GAO, the inspectors general community, and agencies, to make more strides in reducing improper payments. All of these stakeholders are our partners in this endeavor, and they all play a critical role in holding the Federal Government accountable for reducing improper payments.

Thank you for inviting me to testify. I look forward to answering your questions.

Mr. MICA. Thank you.

[Prepared statement of Ms. Cobert follows:]

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Testimony of Beth Cobert
Deputy Director for Management, Office of Management and Budget
before the
House Committee on Oversight and Government Reform
Subcommittee on Government Operations

July 9, 2014

Introduction

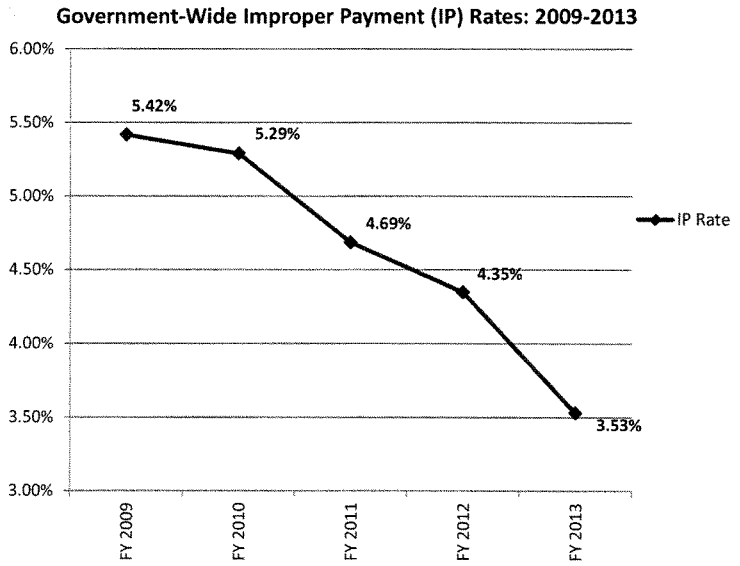
Thank you Chairman Mica, Ranking Member Connolly, and distinguished members of the Subcommittee, for inviting me to discuss the Federal Government's efforts to stop improper payments. I appreciate the opportunity to update the Subcommittee on this important topic.

While not all improper payments are fraudulent, and not all improper payments represent a loss to the Government—some improper payments reflect a lack of documentation or even an underpayment—the loss to the Federal Government is significant.

When the President took office in 2009, improper payment rates were on the rise, with the Fiscal Year (FY) 2009 rate coming in at 5.42 percent, the highest figure to date. We are proud to report that since 2009, the Administration, working together with the Congress, has significantly reduced improper payments. By using tools like annual Inspector General reviews, cutting edge technology, and expanding requirements for high priority programs, we have strengthened accountability and transparency - saving the American people money while improving the fiscal responsibility of Federal programs. While we are pleased with this progress, we are very much aware that we have a lot more work to do in this area.

Results

As a result of this concerted effort, the government-wide improper payment rate has dropped steadily for four consecutive years, from 5.42 percent in FY 2009 to 3.53 percent in FY 2013 when factoring in DOD commercial payments (for more details, please refer to the graph below). This reduction did not just happen by chance—it was the product of hard work done at Federal agencies, and with our partners in the Congress. Over the past year, we reduced improper payment rates in major programs across the Government, including Medicaid, Medicare Advantage (Part C), Unemployment Insurance, the Supplemental Nutrition Assistance Program (SNAP), Pell Grants, and two Social Security programs—Supplemental Security Income and Retirement, Survivors, and Disability Insurance. Furthermore, agencies recovered more than $22 billion in overpayments through payment recapture audits and other methods in FY 2013.



Note: The FY 2013 rate includes Department of Defense Commercial Payments, which was not included in previous years.

In programs administered at the local level, the Federal Government has been working directly with States to ensure that appropriate corrective actions are put in place to reduce improper payments. For instance, through the Medicaid Integrity Program, Federal employees specializing in program integrity provide support to States in their efforts to combat Medicaid provider waste, fraud, and abuse. In other instances, Federal agencies have implemented innovative techniques to ensure that benefit payments are accurate. For example, the Supplemental Security Income program has been integrating, over the last several years, the Access to Financial Institutions (AFI) bank verification process with its program systems. AFI is an electronic process that verifies bank account balances with financial institutions to identify excess resources and ensure that beneficiaries meet program asset thresholds.

While we are happy to see progress in reducing improper payments, however, we must also acknowledge more work needs to be done. For example, a few areas where we did not see improvements in FY 2013 were in the Medicare Part D program and the Earned income Tax Credit program. For these and other areas that are not showing improvement, we will continue to work closely with agencies to find the root causes of the improper payments and will do everything we can to find ways to do better.

Ongoing Efforts to Sustain Success

In an effort to build on our recent progress in driving down improper payments, we are working on a number of fronts. For example:

Improper Payments Guidance Overhaul

The Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA) required OMB to issue implementing guidance to agencies on new requirements, which also provided us with an opportunity to update existing guidance—namely, Appendix C to OMB Circular A-123.

Our goal is not only to provide guidance to agencies on the new IPERIA requirements, but also to transform the improper payment compliance framework so that it creates a more unified, comprehensive, and less burdensome set of requirements for agencies and Inspectors General. In addition, the new guidance will provide a more detailed categorization of improper payments and a more useful taxonomy of root causes. These new categories will help agencies better present the different types of improper payments that occur within their programs and will provide more granularity on improper payment estimates—thus leading to more effective corrective actions at the program level and more focused strategies for reducing improper payments at the government-wide level.

Deep Dive on Corrective Actions

Reducing the government-wide improper payment rate heavily depends on reductions at the program level. And given the wide array of types of programs and improper payment root causes, solutions often have to be tailored. Therefore, we are conducting a careful analysis of program-specific corrective actions to identify programs with the highest return-on-investment or potential for substantially reducing improper payments. A major part of this ongoing exercise includes working closely with agencies to assess the following questions:

- Which current program-specific corrective actions are the most effective in reducing improper payments?
- Is there something that programs are <u>not</u> already doing—but could realistically be doing—that would lead to a significant decrease in improper payments?
- What are the barriers preventing agencies from further reducing improper payments, and what would it take to overcome those barriers?

It is also important to pinpoint and understand the reasons which programs do not consistently make progress in reducing improper payments and why (such as structural or program design reasons) and develop appropriate strategies to help those programs.

The President's FY 2015 Budget

We will continue to use the Budget to build on congressional and Administration action to reduce improper payments. For example, the President's FY 2015 Budget includes a number of program integrity proposals aimed at reducing improper payments and improving government efficiency. Specifically, the FY 2015 budget strengthens Medicare, Medicaid, and the Children's Health Insurance Program by providing tools and funding to fight fraud, waste, and abuse. The Budget proposes $403 million in additional mandatory and discretionary Health Care Fraud and Abuse Control (HCFAC) investments in FY 2015 to stay ahead of the fraud curve. Starting in FY 2016, the Budget proposes that all new HCFAC investments be mandatory and consistent with the levels for discretionary spending on HCFAC set forth in the Budget Control Act. The Budget also includes other program improvements aimed at improving efficiency and effectiveness as States expand Medicaid.

Many of these proposals will provide additional savings for the Government and taxpayers, and will support government-wide efforts to improve the management and oversight of Federal resources. There is compelling evidence that investments in administrative resources can significantly decrease the rate of improper payments and recoup many times their initial investment. For example, for every dollar spent by the Social Security Administration on a disability review, the Government saves an estimated nine dollars in avoided benefit payments. Similarly, for every new dollar spent on HCFAC program integrity efforts, the Centers for Medicare & Medicaid Services' actuaries conservatively estimate approximately a dollar and a half is saved or averted. Historically, for every dollar spent on health-care-related fraud and abuse investigations through HCFAC and other programs in the last three years, the Government recovered $8.10. This is the highest three-year average return on investment in the 17-year history of the HCFAC program. The President's FY 2015 Budget also supports the Internal Revenue Service efforts aimed at improving enforcement of current tax laws and reducing the tax gap. We will continue to identify areas—in addition to those outlined in the Budget—where we can work with the Congress to further improve agency efforts.

The Do Not Pay Initiative

Under this Administration, the Federal Government has focused on leveraging technology and sharing data to address improper payments, as exemplified by the Do Not Pay initiative. The goal of this initiative is to use data matching and predictive analytics to prevent improper payments before they occur. On January 10, 2013, the President signed into law IPERIA, which requires increased use of technology to combat improper payments. IPERIA mandated five databases to screen against. Additionally, the Congress passed and the President signed the Bipartisan Budget Act of 2013, which expanded IPERIA to contain a sixth database: the SSA Prisoner Updates Processing System (PUPS).

In order to fulfill the requirements of IPERIA and further prevent improper payments, OMB has taken a number of actions. First, we have provided the Congress a plan for agencies to integrate the required databases, and provided a plan for improving the data quality of death data maintained by SSA. Second, as of June 1, 2013, we have established an initial Do Not Pay working system to review payments that are centrally processed at Treasury. Third, we have

issued Memorandum M-13-20 on Protecting Privacy while Reducing Improper Payments with the Do Not Pay Initiative. Finally, we have established the Treasury Do Not Pay System as a System of Record providing proper privacy protection and allowing "computer matching agreements" with agencies.

OMB continues to work with agencies to achieve the full intent of IPERIA by verifying proper payments pre-award, prepayment, and post payment across all six databases, as appropriate, and is preparing the first report to the Congress on the implementation of the Do Not Pay initiative. Furthermore, to help bolster Do Not Pay's value and address other key Administration goals, the President's FY 2015 Budget re-proposes to further reduce improper payments by providing the Treasury Do Not Pay system access to the SSA full Death Master File database, which includes death information received from State sources. And we look forward to working with the Congress on S.1360, the Improper Payments Agency Cooperation Enhancement Act (IPACE Act), which includes many of the Administration priorities on sharing death data to prevent improper payments.

Conclusion

I would like to close by emphasizing that stopping improper payments remains a priority for this Administration. We have taken an aggressive approach to attacking waste, fraud, and abuse within Federal agencies, and we will continue to seek out new and innovative tools to help us in this fight.

While we are proud of the progress we have made so far, we know there is much more work to be done to improve the accuracy and integrity of Federal payments. I look forward to continuing to work with this subcommittee and other committees, as well as the Government Accountability Office, the Inspectors General community, and agencies to make more strides in reducing improper payments. All of these stakeholders are our partners in this endeavor, and they play a critical role in holding the Federal Government accountable for reducing improper payments.

Thank you again for inviting me to testify. I look forward to answering your questions.

Mr. MICA. And I'll now recognize Mr. Mark Easton. He's the Deputy Chief Financial Officer at the Department of Defense.

STATEMENT OF MARK EASTON

Mr. EASTON. Thank you.

Chairman Mica, Ranking Member Connolly, Congressman Meadows, thank you for the opportunity to discuss the actions the Department of Defense is taking to reduce improper payments and achieve full compliance with IPERIA.

I submitted a statement for the record and will summarize it briefly.

As the Deputy Chief Financial Officer of DOD, I am responsible for financial policy, systems compliance, internal controls governing the financial and accounting aspects of all business operations across the Department. I am proud to have served in the Department for over 40 years, both in uniform and as a civilian.

I'm also very mindful of our stewardship responsibilities and am keenly aware that the Department of Defense financial management remains on the GAO's high-risk list and that we are the only Federal agency without a positive financial audit opinion. I'm also convinced that this status will change over time, and remain committed to our broader improvements in financial management, including the improper payments.

Most importantly, I should add that Secretary Hagel, Deputy Secretary Work, my new boss, and the Chief Financial Officer, Mike McCord, and other senior leaders throughout the Department are equally committed.

In short, we feel we have a sound and active program in place to identify, report, eliminate, and, if need be, recover improper payments. We estimate that less than 1 percent of all of our payments meet the definition of "improper." That is low compared to the government-wide rate of a little over 3–1/2 percent for fiscal year 2013. And, moreover, the nature of many of our improper payments allow us to resolve them quickly.

Our record of minimal improper payments is particularly noteworthy considering the size and complexity of the Department's business operations. Consider that, last year, the Defense Finance and Accounting Service, or DFAS, handled nearly 90 percent of our total payments and disbursed nearly $580 billion, including 162 million pay transactions, 6 million travel payments, and nearly 10 million commercial invoices.

Of course, there is always room for improvement. We constantly strive to reduce improper-payment rates where we can cost-effectively do so. Our overall financial improvement and audit readiness effort, more commonly known as the FIAR Plan, will continue to provide increased confidence and credibility in the numbers we report. These efforts, plus our collaboration with OMB, GAO, and the Congress, help us to sustain this focus.

In my larger statement, I described five broad categories of payments that we used as reporting elements. These are commercial payments to vendors, civilian and military payrolls, travel payments, retired annuitant pay, and the similar payments by other organizations outside DFAS. I described our approach to controlling improper payments for each of them and will be happy to provide

additional details this morning if you wish; otherwise, they are made a part of the record.

I have also provided an update on recent audit results from GAO and the DOD Inspector General, who provides an annual compliance assessment. Each report helps to identify additional opportunities to strengthen financial management and improve on our improper-payment reduction program.

Many of the issues and challenges highlighted in the reports are the same ones that affect our financial reporting and audit capabilities. We concur with those issues and recognize that, until solved, they will continue to limit the confidence that you have in our efforts to accurately report improper payments.

We also appreciate their recognition of the progress we are making.

Mr. Chairman, in conclusion, I'd emphasize that we have a fundamentally sound improper-payment program at DOD that minimizes improper payments to very small levels. Our more comprehensive efforts to improve financial information and meet financial reporting requirements and audit standards will also improve the efficiency of our improper-payment efforts as well as reinforce the completeness and credibility of our improper-payment rates report. I will further—it will further improve our attempts to minimize improper payments while also establishing an infrastructure that will greatly improve efficiency.

Less than 2 weeks ago, Bob Hale, the DOD's longest-serving CFO, left office for a well-deserved retirement, but, most importantly, he left a legacy that assigned a high priority to improving DOD financial management over the long term. Our current CFO, Under Secretary Mike McCord, is equally committed to improving the quality of our financial information and achieving auditability, and that includes full compliance with IPERIA.

Elimination of improper payments is and will continue to be an important and visible part of financial management stewardship at DOD.

That completes my statement, and I welcome your questions.

Mr. MICA. Thank you. And, as I said, we'll hold them.

[Prepared statement of Mr. Easton follows:]

Statement of

Mark E. Easton
Deputy Chief Financial Officer
U.S. Department of Defense

before the

House Committee on Oversight and Government Reform,
Subcommittee on Government Operations

July 9, 2014

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Subcommittee on Government Operations

Mr. Chairman, Ranking Member Connolly, members of the subcommittee, thank you for the opportunity to discuss the actions the Department of Defense (DoD) is taking to reduce improper payments and to achieve sustained compliance with the Improper Payments Elimination and Recovery Improvement Act (IPERIA) of 2012.

As the Deputy Chief Financial Officer for DoD, I am responsible to the Chief Financial Officer for the financial policy, systems compliance, and associated internal controls that govern the financial and accounting aspects of business operations across the Defense enterprise. I am proud to have served for over 40 years, taking on various roles in the Department to support our warfighters—the men and women in uniform—as they ensure our nation's security. I am also mindful of our public stewardship responsibility. And, I am keenly aware that DoD financial management remains on the high risk list of the Government Accountability Office (GAO), and that we are the only Federal agency without a positive financial audit opinion. I assure you that this status will change and that I spend much of my time working to make that happen. Most importantly, Secretary Hagel, Deputy Secretary Work, my new boss and Chief Financial Officer Mike McCord, and other senior leaders throughout the Department are demanding those changes. Reducing improper payments is a very visible and high priority element of our overall efforts to strengthen DoD financial management – along with improving the quality of our financial information for decision-making and achieving financial auditability. In this context, I am pleased to join our interagency panel today to discuss our efforts to reduce improper payments.

OVERALL ASSESSMENT

I believe DoD has a fundamentally sound and active program in place to identify, report, eliminate and, if needed, recover improper payments. Using the current definition, an improper payment is any payment that is made to the wrong person or entity, is made in the wrong amount, lacks the proper entitlement authorization, or is made without proper documentation. Currently, we estimate that less than one percent of all of our payments meet the definition of being improper. That is low compared with the government-wide rate of 3.53 percent for Fiscal Year (FY) 2013. Moreover, many of our improper payments are quickly resolved.

Despite the kind of challenges associated with complex contract payments and the size and world-wide operations of DoD, the nature and type of many of our payments involve a recurring relationship that can usually be validated internally prior to payment. Our largest challenges go beyond improper payments. They are the same ones that impact financial reporting auditability across the DoD enterprise. For example, they include the ability to reconcile and present universes of transactions so that we can conduct comprehensive sampling to provide assurance that we have quality control over all payments, while also being able to readily source documents to support those payments. As a result, many of our improvement efforts are focused on making the Department's financial statements auditable, while also strengthening and increasing the credibility of the low improper payment numbers we report.

Our colleagues at the Office of Management and Budget (OMB) generally agree that DoD has a strong program in place to control improper payments. It is important to note that DoD improper payments are not on OMB's list of high-priority (error) programs. In fact, OMB has identified some of the techniques we use to combat improper payments as best practices that other agencies should consider to strengthen their own programs.

Our record of minimal improper payments is particularly noteworthy given the size and complexity of the Department's business operations. Last year the Defense Finance and Accounting Service (DFAS) handled nearly 90 percent of our total payments and disbursed a total of $579 billion. DFAS processed nearly 162 million pay transactions, 6 million travel payments, and 10.3 million commercial invoices. It also handled 270 million General Ledger account transactions and nearly $700 billion in military retirement and health benefits funds. We are a highly complex organization. Despite the volume and complexity of our activities, DFAS has worked hard and successfully to keep the incidence of improper payments in check.

Of course, there is always room for improvement. We constantly strive to reduce our improper payment rates where we can cost-effectively do so. Our overall financial improvement and audit readiness effort – known as the FIAR Plan – will continue to provide increased confidence and credibility in the numbers we report. These efforts, plus our collaboration with OMB, GAO, and Congress help to sustain this focus. As a result, we are contributing to government-wide improvements in financial management.

ASSESSMENT BY CATEGORY

Let me discuss five broad categories of payments that we use as reporting elements. I include our approach to controlling improper payments for each of them and, where appropriate, I will cite the improvements that we plan.

Commercial Payments

For commercial payments we make heavy use of prepayment screening, both automated and manual, to prevent improper payments. Our total commercial payment outlay at the end of Fiscal Year 2013 was $352.6 billion, yet our improper commercial pay rate was only 0.03 percent.

Several key controls help to keep our commercial improper payments low. For example, we rely on a pre-payment review tool called Business Activity Monitoring, or BAM. Introduced in 2008, BAM is an automated prepayment mechanism that uses business logic to flag, for human review, payments that may be improper. For instance, BAM flags similar payments for review if they involve matching dollar amounts within the same time frame. This helps us avoid duplicate payments. Likewise, it flags an invoice number if it is very close to that of a recently processed invoice. Over these past six years, when coupled with diligent work by DFAS technicians and logic upgrades keyed to new and recurring problem areas, BAM has prevented more than $8.2 billion in improper payments--money that can be used as intended and directed toward priority missions.

Similarly, following a GAO recommendation from its 2013 program assessment, our major improvement effort over the past two years has been the implementation of post-payment stratified statistical sampling. With it, we have enhanced our initial statistical sampling methodology, first devised in 2012, to provide a more rigorous and tiered approach based on dollar value. This technique will help to pinpoint areas of concern, solve recurring issues, and provide more accurate sampling statistics. We are confident that once fully implemented, these results will confirm a very low rate of improper payments for our commercial pay program. You should see this confirmation in our next Agency Financial Report which will be issued in

November. And, as with all efforts related to financial improvement, we integrate activities wherever possible with ongoing FIAR efforts to become audit ready. This is how we are ensuring that our efforts to reduce improper payments contribute to a culture of improved financial management stewardship

Civilian and Military Payroll

Statistical sampling is also used by DFAS to review the military Services' and defense components' payrolls to estimate, identify, and report improper payments. Errors that are identified are turned over to the relevant organizations for corrective action. For military and civilian pay, we find that post-payment statistical sampling provides an effective supplement to, and validation of, existing prepayment reviews. Likewise, pre-pay audits and a focus on improved documentation have helped us to minimize under and over payments. As FY 2013 ended, our civilian pay outlay was $57 billion, with only 0.17 percent of it being improper. This speaks to the value of key controls and measures that we have installed in our civilian pay program.

Similarly, almost $100 billion in FY 2013 military pay outlays occurred, yet improper payments to our Service members did not exceed 0.29 percent, despite the dynamic nature of military operations that can drive changes in pay and allowances. A common root cause of improper civilian and military pay is the untimely submission of personnel status changes to the payroll systems. Automation that facilitates these changes in an integrated and timely fashion, as well as supports a strong process and controls-oriented partnership with the personnel community, continues to be an important solution. Suffice it to say, many military and civilian pay errors are quickly identified and fixed during the subsequent pay period. Current efforts to ensure that personnel documentation is readily available for review will also help to address this very important payment category.

Travel Payments

Our Travel Pay is an area that has consistently missed annual goals and is receiving increased visibility and emphasis. Poor training for approving officials is leading to a lack of documentation. This is a known risk area for us. Consequently, our FY 2013 travel improper payment rate was 6.5 percent, while our goal was half that rate. We subject our travel payments to monthly statistical sampling to identify, minimize, and correct improper payments. We have also begun using automated file matching among our travel systems to prevent duplicate payments. The vast majority of temporary duty travel payments are made within the centralized Defense Travel System. This has provided the opportunity to employ a data mining software tool that provides a payment recapture audit looking for potential improper payments. It automatically establishes the debt and contacts both the traveler and approving official to get a problem fixed as soon as possible.

As with payroll disbursements, component financial managers are notified of the need for corrective action on a quarterly basis. Corrective action includes any necessary recovery of overpayments or additional payouts for underpayments. We have found that most improper travel payments made using our centralized travel system are due to traveler input errors that are missed by the approving officials. Components that make travel payments through systems other than the Defense Travel System follow similar procedures and report their results.

Retired and Annuitant Pay

In FY 2013, Retirement and Annuitant pay totaled $56.6 billion, with improper payment errors accounting for only 0.035 percent of the payments made, or $19.9 million. Of that amount, 96 percent was recovered within 60 days. To achieve this, we use post-payment statistical sampling for retiree and annuitant pay, with specific emphasis on recapturing payments to deceased retirees when death notifications have not been made in a timely manner. In addition to random statistical samplings of retiree and annuitant pay records, an automated search is conducted each month to identify and recapture any payments made to deceased individuals for retired and annuitant benefits. Periodic special reviews are undertaken in potential high risk areas such as Combat-Related Special Compensation, Concurrent Receipt of Disability Payment, and new retiree and annuitant accounts.

Payments by Other Organizations

The payment categories that I have just discussed are the largest ones in DoD and are handled primarily by DFAS. Other payment operations occur in multiple organizations across the Department. Many of these organizations have implemented what we believe to be a strong program to estimate, identify, report, eliminate, and recover improper payments.

Two noteworthy examples are the U.S. Army Corps of Engineers (USACE) and the Defense Health Agency (DHA). The Corps conducts statistical sampling for all of its commercial payments and a 100 percent review of all travel payments over $2,500, as well as a statistical sampling of those below $2,500. It normally recaptures 99 to 100 percent of all overpayments. It also has conducted an internal recovery audit program using its Oracle data mining tool and has done so for the past several years.

At DHA, home of vital military health benefits programs, stringent contract performance standards are employed that involve stratified statistical sampling based on dollar amounts and payment types. The contractor actually making the payments is incentivized by contract terms to minimize any improper payments and penalized when performance standards are not met. In addition, the comprehensive annual post-payment audit by an external independent contractor established an improper payment rate of 0.32 percent, as cited in our FY 2013 Agency Financial Report.

RECENT AUDIT RESULTS

We welcome the feedback provided by our oversight organizations, both internal to DoD and the GAO. Each of them, to include military service audit organizations, has helped to identify areas for improvement that collectively will strengthen financial management and address long standing weaknesses. As mentioned earlier, many of the issues or challenges highlighted in relevant audit reports are the same as those that impact our financial reporting capabilities. We concur with those issues and recognize that, until solved, they limit the confidence you have in our efforts to reduce improper payments. All oversight organizations acknowledged both our understanding and recent progress in addressing these weaknesses.

The 2013 GAO report is a comprehensive one that emphasizes several areas for improvement. GAO recognized the progress we had made since its earlier 2009 report. It also provided 10 recommendations to which the Department either fully or partially concurred. Three

have already been implemented: One, DFAS Commercial Pay has modified its statistical sampling methodology to include stratification by invoice dollar amount; two, required process and sampling documentation has been maintained; and three, DFAS, USACE and DHA have completed risk assessments for their respective payments. Many of the remaining recommendations are associated with broader financial improvement efforts that we link to our statute-driven, September 30, 2014, goal related to the audit readiness of our budget execution. In addition, we are updating our internal regulations to be compliant with IPERIA and will be issuing them concurrent with the issuance of OMB's final implementing guidance.

The DoD Office of Inspector General (IG) also conducts an annual review of our compliance with the Improper Payments Elimination and Recovery Act. DoD was considered compliant in FY 2011. The DoD IG also acknowledged that we were aware of and making progress on broader issues concerning documentation that would support our reporting process. One area of non-compliance for the past two years, as recognized earlier, concerns our inability to achieve established goals for reductions in travel improper payments. As required by the statute, Travel Pay is currently under a closely monitored remediation plan to address these deficiencies.

CONCLUSION

I have discussed our specific approaches to control improper payments and how we are complying with the IPERIA. More generally, we have a fundamentally sound improper payment program at DoD that minimizes the incidents of improper payments to very small levels. Our more comprehensive efforts to improve financial information and meet financial reporting audit standards will improve the efficiency of our improper payment efforts and reinforce confidence in the completeness and credibility of our reporting. It will further improve our attempts to minimize improper payments, while also establishing an infrastructure that allows us to do more efficient and in-depth analysis of source documentation where appropriate. We also actively participate in those government-wide efforts to improve financial management. For example, and relating specifically to improper payments, our earlier experience with pre-payment checks contributed to initial transaction testing conducted by OMB and Treasury for the Do Not Pay (DNP) List Portal. Likewise, we are also collaborating with Treasury on debt collection improvement, representative of our goal to leverage Treasury capabilities wherever possible, in order to improve our capabilities, obtain efficiencies and reduce duplication.

Less than two weeks ago, Bob Hale, the DoD's longest serving Chief Financial Officer left office for a well-deserved retirement. He has left a legacy that assigned a high priority to improved long term financial management. Our current CFO, Under Secretary Mike McCord, is committed to these same goals, improving the quality of our financial information, and achieving financial auditability. I assure you that our efforts will continue to comply fully with the IPERIA. Elimination of improper payments constitutes an important part of our financial management stewardship.

I welcome your questions.

Mr. MICA. Now let me introduce and welcome Dr. Shantanu Agrawal, who's the Deputy Administer and Director at the Centers for Medicare and Medicaid Services' Center for Program Integrity.

Welcome. You're recognized, sir.

STATEMENT OF SHANTANU AGRAWAL, M.D.

Dr. AGRAWAL. Thank you.

Chairman Mica, Ranking Member Connolly, Congressman Meadows, thank you for the invitation to discuss the Centers for Medicare and Medicaid Services' efforts to reduce improper payments. CMS shares this subcommittee's commitment to protecting the Medicare Trust Fund and ensuring taxpayer dollars are spent on claims that are accurately paid.

Each year, CMS estimates its Medicare Fee-for-Service improper-payment rate using the Comprehensive Error Rate Testing, or CERT, process. In fiscal year 2013, the Medicare Fee-for-Service improper-payment rate was 10.1 percent.

It's important to understand what improper payments are and what they are not. Like other large and complex Federal programs, Medicare, Medicaid, and CHIP are susceptible to payment, billing, and coding errors. Improper payments do not always represent an unnecessary loss of funds. They are not also necessarily fraudulent, nor are they necessarily payments for services that should not have been provided. Improper payments can also represent either overpayments or underpayments on billed claims.

Medicare Fee-for-Service improper payments can result from a variety of circumstances, including: first, services with no documentation; second, services with insufficient documentation; third, incorrectly coded claims; fourth, services provided that were not medically necessary; and, five, any other errors, such as payments for noncovered services.

The vast majority, over 60 percent, of Medicare Fee-for-Service improper payments are a result of insufficient documentation. For example, if an end-stage renal disease facility submitted a claim for 1 month of dialysis services for a beneficiary but the submitted documentation did not include the physician's order for dialysis and medications, as required by Medicare policy, the CERT program would score the claim as an improper payment.

Another example would be, if a physician submitted a claim for an office visit with a Medicare beneficiary but the office visit note lacked enough identifying information about the beneficiary, the CERT program would score the claim as an improper payment.

The factors contributing to improper payments are complex and vary from year to year. For example, the leading drivers of the improper-payment rate in fiscal year 2013 were hospital outpatient departments, skilled nursing facilities, and home health providers.

A contributing factor to the Fee-for-Service error rate was the implementation of new home health policies requiring documentation of a face-to-face encounter prior to initiating home health services. This policy change will ultimately strengthen the integrity of the program. However, since it takes time for providers and suppliers to fully implement new policies, especially those with new documentation requirements, it's not unusual to see increases in

error rates following implementation of otherwise-warranted program integrity policies.

CMS is committed to paying claims in an accurate and timely manner and has a comprehensive strategy in place to address the improper-payment rate.

First, CMS has put critical safeguards in place to make sure that only legitimate providers are enrolling in the Medicare program to make sure we do not allow bad actors to bill the program and generate improper payments.

The Affordable Care Act required CMS to screen all existing 1.5 million Medicare suppliers and providers under new risk-based procedures. Since March 25th, 2011, more than 930,000 providers and suppliers have been subject to the new screening requirements. We have deactivated over 350,000 providers and suppliers and revoked over 20,000 providers and suppliers, meaning they are no longer able to bill the Medicare program.

CMS has demonstrated that provider enrollment actions result in cost avoidance. For example, by revoking just 48 providers identified by our advanced predictive analytics technology, CMS prevented $81 million in improper payments.

Second, CMS has designed its claim-processing systems to detect anomalies in claims—for example, preventing payments for services such as a hysterectomy for a man or prostate exam for a woman.

Medicare pays about $3.3 million Fee-for-Service claims each day. Due to the volume of claims processed by Medicare each day, CMS relies heavily on automated edits to identify inappropriate claims. The National Correct Coding Initiative stops claims like these that never should be paid in Medicare Part B and Medicaid. This program saved the Medicare program over $500 million in fiscal year 2013 alone.

Third, CMS develops medical review strategies using the improper-payment data to ensure that we target the areas of highest risk and exposure. The review strategies range from issuing comparative billing reports that educate providers about their billing practices by showing the provider in comparison to his or her State and national peers, to targeted medical review of specific providers. Medical review resulted in $5.6 billion in savings for fiscal year 2013.

As required by law, CMS also uses other contractors to perform medical review on a primarily post-pay basis. These contractors have returned $3.7 billion in the same time period.

Fourth, CMS is implementing prior authorization processes used by the private sector to prevent potential improper payments before they are made. To help address the high improper-payment rate for power mobility devices, CMS implemented the Medicare Prior Authorization of Power Mobility Device Demonstration in seven high-risk States and has announced plans to expand the demonstration to an additional 12 States. We are seeing real results from this demonstration.

CMS is committed to paying claims in an accurate and timely manner and has a comprehensive strategy in place to address the improper-payment rate. I look forward to answering this sub-

committee's questions on how we can improve our commitment to ensuring the accuracy of payments made by CMS's programs.

Mr. MICA. Thank you.

[Prepared statement of Dr. Agrawal follows:]

STATEMENT OF

SHANTANU AGRAWAL, M.D.
DEPUTY ADMINISTRATOR AND DIRECTOR,
CENTER FOR PROGRAM INTEGRITY
CENTERS FOR MEDICARE & MEDICAID SERVICES

ON

"CMS EFFORTS TO REDUCE IMPROPER PAYMENTS IN THE MEDICARE PROGRAM"

BEFORE THE
UNITED STATES HOUSE COMMITTEE ON
OVERSIGHT & GOVERNMENT REFORM
SUBCOMMITTEE ON GOVERNMENT OPERATIONS

JULY 9, 2014

U.S. House Committee on Oversight & Government Reform
Subcommittee on Government Operations
Hearing on
CMS Efforts to Reduce Improper Payments in the Medicare Program
July 9, 2014

Chairman Mica, Ranking Member Connolly, and members of the Subcommittee, thank you for the invitation to discuss the Centers for Medicare & Medicaid Services' (CMS) efforts to reduce improper payments. The Administration is committed to reducing waste and improper payments across the government. On November 20, 2009, President Obama issued Executive Order 13520 calling on all Federal agencies to reduce waste and improper payments across Federal programs and CMS is working hard to carry out the Order. In addition, the President has issued a memorandum on intensifying and expanding payment recapture audits on March 10, 2010; issued a memorandum to enhance payment accuracy by creating a "Do Not Pay" initiative on June 18, 2010, signed the Improper Payments Elimination and Recovery Act (IPERA) into law on July 22, 2010, and signed the Improper Payments Elimination and Recovery Improvement Act (IPERIA) into law on January 10, 2013.

Improper Payments in Medicare Fee-For-Service

Each year, CMS estimates the improper payment rate and a projected dollar amount of improper payments for Medicare, Medicaid, and CHIP.[1] These rates are determined annually in an open and transparent process required by the Improper Payments Information Act (IPIA), as amended by IPERA and IPERIA. CMS uses the Comprehensive Error Rate Testing (CERT) process to sample and review Medicare fee-for-service (FFS) claims to project an improper payment rate. In FY 2013, the Medicare FFS improper payment rate was 10.1 percent, or a projected $36 billion.

Improper payments are errors that are not necessarily fraudulent. The vast majority of Medicare FFS improper payments fall into two categories: 1) inadequate documentation to support the services billed and 2) the documentation as provided did not support that the services were medically necessary. Payments deemed "improper" under these circumstances tend to be the result of documentation and coding errors made by the provider as opposed to payments made

[1] http://www.hhs.gov/afr/2013-hhs-agency-financial-report.pdf

for inappropriate claims. The most common error providers make is the failure to properly document the beneficiary's need for the service and most improper payments are made when information in the medical record did not support the services billed.

Medicare has been deemed a "high risk" program by the Government Accountability Office in part due to the sheer size and complexity of the program. CMS pays 1.5 million providers for health care for 54 million beneficiaries under the Medicare program. The Office of Management and Budget has determined that Medicare is also a "high error" program due to its annual estimated error amount. The factors contributing to improper payments are complex and vary from year to year. For example, a contributing factor to the FY 2013 Medicare FFS error rate was the implementation of new home health policies regarding documentation. Although the policy change will ultimately strengthen the integrity of the program, there is a change-management aspect to implementing new policies. Since it takes time for providers and suppliers to fully implement new policies, especially those with new documentation requirements, it is not unusual to see changes in error rates following implementation of new policies.

CMS Efforts to Identify, Reduce, and Prevent Improper Payments

CMS is committed to paying claims in an accurate and timely manner and has a comprehensive strategy in place to address the improper payment rate, including strengthening provider enrollment to ensure only legitimate providers are enrolled, and preventing improper payments by using edits to deny claims that should not be paid. CMS also develops targeted demonstrations in areas with consistently high rates of improper payments, such as the prior authorization demonstration for the power mobility device benefit, and plans to test prior authorization with other high-risk items and services. CMS Medicare Administrative Contractors (MACs) conduct provider education to help providers avoid documentation errors and other sources of improper payments, in addition to their work reviewing claims. CMS also uses Recovery Auditors, as required by law,[2] to identify and correct improper payments by reviewing claims on a post payment basis.

[2] The Recovery Auditor demonstration project was required by section 306 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and the Congress expanded the program in section 302 of the Tax

Provider Enrollment

Provider enrollment is the gateway to billing the Medicare program, and CMS has put critical safeguards in place to make sure that only legitimate providers are enrolling in the Medicare program. The Affordable Care Act required CMS to revalidate all existing 1.5 million Medicare suppliers and providers under new risk-based screening requirements. Since March 25, 2011, more than 930,000 providers and suppliers have been subject to the new screening requirements and over 350,000 provider and supplier practice locations had their billing privileges deactivated for non-response as a result of revalidation and other screening efforts.[3] Since the implementation of these requirements, CMS has also revoked 20,219 providers' and suppliers' ability to bill the Medicare program as a result of felony convictions, practice locations that were determined to be non-operational at the address CMS had on file, or non-compliance with CMS rules, such as licensure requirements. CMS has demonstrated that revocations result in cost avoidance. For example, by revoking 48 providers identified by our advanced predictive technology, CMS prevented $81 million in improper payments.[4]

The success of our provider enrollment and screening efforts has demonstrated the importance of preventive actions to ensure that only legitimate providers are serving our beneficiaries. In April 2013, CMS issued a proposed rule that would provide CMS with additional authority to remove bad actors from the Medicare program. CMS proposed to permit denial of an enrollment application of a provider affiliated with a defunct provider with an outstanding Medicare debt, revocation of a provider for a pattern or practice of submitting claims for services that fail to meet Medicare requirements, and clarifying the list of felony convictions that may result in a denial or revocation enrollment.

Relief and Health Care Act of 2006, directing CMS to implement a permanent national recovery audit contractor program by January 1, 2010.

[3] Deactivated providers could reactivate over time with updated practice information or after showing evidence of proper licensing.

[4] CMS, "Report to Congress: Fraud Prevention System Second Implementation Year," June 2014. Access at http://www.stopmedicarefraud.gov/fraud-rtc06242014.pdf.

Claims Edits and Medical Review

In keeping with statutory requirements to promptly pay claims in Medicare, our claims processing systems were built to quickly process and pay the roughly 3.3 million Medicare FFS claims that we receive each day, totaling approximately 1.2 billion Medicare FFS claims in calendar year 2013. Due to the volume of claims processed by Medicare each day and the significant cost associated with conducting medical review of an individual claim, CMS heavily relies on automated edits to identify inappropriate claims. CMS has designed its systems to detect anomalies on the face of the claims, and through these efforts, we are paying the claims correctly as they are submitted nearly 100 percent of the time. For example, CMS is using the National Correct Coding Initiative (NCCI) to stop claims that never should be paid in Medicare Part B and Medicaid. This program prevents payments for services such as hysterectomy for a man or prostate exam for a woman. The use of the NCCI procedure-to-procedure edits saved the Medicare program $530 million in FY 2013.

The main challenge with improper payments is that detection relies on evaluating the medical record – to identify whether the service was medically needed, for example – which is not submitted with claims. CMS and its MACs develop medical review strategies using the improper payment data to ensure that we target the areas of highest risk and exposure. The review strategies range from issuing comparative billing reports that educate providers about their billing practices by showing the provider in comparison to his or her state and national peers, to encourage providers to conduct self-audits, to targeted medical review of specific providers. The MACs reported that medical review resulted in $5.6 billion in savings for FY 2013.[5]

Prior Authorization

One area with high incidences of improper payments that CMS recently addressed was the Power Mobility Device (PMD) benefit; CMS found that over 80 percent of claims for motorized wheelchairs did not meet Medicare coverage requirements in 2011.[6] As result of these and other findings showing very high improper payment rates for PMDs, CMS implemented the Medicare

[5] http://www.hhs.gov/budget/fy2013/fy2013-other-information.pdf
[6] http://cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/CERT/Downloads/MedicareFFS2011CERTReport.pdf

Prior Authorization of PMDs Demonstration in seven high-risk states in September 2012.[7] Since implementation, CMS observed a decrease in expenditures for PMDs in the demonstration states and non-demonstration states. Based on claims submitted as of April 4, 2014, monthly expenditures for PMDs decreased from $20 million in September 2012 to $6 million in December 2013 in non-demonstration states and from $12 million to $3 million in demonstration states.[8]

Based on this success, CMS announced plans to expand the demonstration to an additional 12 states.[9] CMS also proposed to establish a prior authorization process for certain durable medical equipment, prosthetics, orthotics, and supplies items that are frequently subject to unnecessary utilization. Through a proposed rule issued in May 2014, CMS solicited public comments on this prior authorization process, as well as criteria for establishing a list of durable medical items that are frequently subject to unnecessary utilization that may be subject to the new prior authorization process.[10] CMS will also launch two payment models to test prior authorization for certain non-emergent services under Medicare.[11] Information from these models will inform future policy decisions on the use of prior authorization.

The President's FY 2015 Budget also includes a proposal to give CMS the authority to require prior authorization for all Medicare FFS items, particularly those items at the highest risk for improper payment. By allowing prior authorization on additional items, CMS can ensure in advance that the correct payment goes to the right provider for the appropriate service, and preventing potential improper payments before they are made.

FFS Recovery Auditors

CMS uses Recovery Auditors to perform medical review to identify and correct Medicare improper payments primarily on a post payment basis. The Recovery Audit Program identifies

[7] The seven states are: CA, IL, MI, NY, NC, FL and TX

[8] http://cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Medical-Review/Downloads/MedicarePriorAuthorizationofPowerMobilityDevicesDemonstration_05212014.pdf

[9] The twelve states are: AZ, GA, IN, KY, LA, MD, MO, NJ, OH, PA, TN, and WA

[10] http://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2014-Press-releases-items/2014-05-22.html

[11] These services include hyperbaric oxygen therapy and repetitive scheduled non-emergent ambulance transport.

areas for potential improper payments and offers an opportunity to provide feedback to providers on future improper payment prevention. CMS encourages collaboration between Recovery Auditors and MACs to discuss improvements, areas for possible review, and corrective actions that could prevent improper payments. Educational efforts include articles or bulletins providing narrative descriptions of the claim errors identified and suggestions for their prevention, as well as system edits for errors that can be automatically prevented at the onset. In addition, CMS uses the vulnerabilities identified by the Recovery Auditors to implement actions that will prevent future improper payments nationwide. In FY 2012, the Recovery Auditors identified and corrected $2.4 billion in improper payments.[12] Since full implementation in FY 2010 through the first quarter of FY 2014, the Recovery Auditors have returned over $7.4 billion to the Medicare Trust Fund.

CMS is currently in the procurement process for the next round of Recovery Audit Program contracts and plans to award these contracts this year. In February 2014, CMS announced a number of changes to the Recovery Audit Program that will take effect with the new contract awards as a result of stakeholder feedback. CMS believes that improvements to the RAC program will result in a more effective and efficient program, including improved accuracy, less provider burden, and more program transparency.

Conclusion

CMS's goal is to ensure our beneficiaries receive the right services, at the right time, in appropriate levels of care and at the right price. While CMS has made progress in reducing improper payments, more work remains. Reducing waste and errors in our programs will allow us to target taxpayer funds to provide health care services for our beneficiaries, and the systems controls and ongoing corrective actions that CMS is undertaking across our programs will address CMS's rate of improper payments. We share this Subcommittee's commitment to protecting taxpayer and trust fund dollars, while also protecting beneficiaries' access to care, and look forward to continuing this work.

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[12] http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Recovery-Audit-Program/Downloads/Report-To-Congress-Recovery-Auditing-in-Medicare-and-Medicaid-for-Fiscal-Year-2012_013114.pdf.

Mr. MICA. And we'll hear from our last witness, Mr. John Koskinen, and he is the IRS Commissioner.

Welcome back. And you're recognized.

STATEMENT OF THE HON. JOHN KOSKINEN

Mr. KOSKINEN. Thank you, Chairman Mica, Ranking Member Connolly, and Congressman Meadows, for the opportunity to discuss the work being done by the IRS to reduce improper and erroneous payments in the programs we administer.

These are important issues to the IRS to which I have personally devoted substantial time. The IRS views improper and erroneous payments as a very serious problem and one where we continue to devote a significant amount of time and resources.

One of our major areas of focus is refund fraud, especially fraud caused by identity theft. I'm pleased to report that, in this area, over the last couple of years, the IRS has made important progress. In 2013, we suspended or rejected 5.7 million suspicious returns worth more than $17.8 billion. Through the end of May of this year, more than 3.7 million suspicious returns have been suspended or rejected. We have also opened more than 800 new investigations into identity theft and refund fraud schemes thus far this year, bringing the total number of active cases to more than 1,900.

Despite the progress, we realize that more needs to be done. Fighting refund fraud caused by identity theft is an ongoing battle for the IRS, as we must remain vigilant given the propensity of identity thieves to develop new and more complicated schemes.

And even with the progress we've made so far, I've recently asked our senior leadership team to reevaluate everything we're doing in this area and to consider additional steps we could take related to refund fraud. For example, we are consolidating employees working on identity-theft victims assistance across the agency into a single office. We will also be limiting to three the number of refunds that can be electronically deposited into a single bank account or debit card.

We're also working to reduce improper payments by improving compliance with regard to refundable tax credits, particularly the Earned Income Tax Credit Program. Our programs that focus on EITC combine to protect approximately $4 billion annually, but we are concerned that the improper-payment rate for the EITC remains unacceptably high, along with the dollar volume of the payments that are made improperly.

As noted, this program—this problem has existed in a steady state for several years, and when I began as Commissioner, I advised our senior team that we need to make improvements in these rates.

We again have pulled together what I call everybody who knows anything about EITC in the agency into a working group that is assessing all of our past and current efforts in this area and exploring new possibilities for improving the EITC. I view this as one of the most important areas of our activities.

One thing we've already done is disaggregate the problem and see where most of the noncompliance is. We found that EITC errors fall under three main categories. The first involves claims for dependent children that people are not entitled to claim. The second

is misreporting of income. And the third is improperly claiming the head of household or single filing status.

Mr. KOSKINEN. We believe having made this more detailed background study about EITC enforcement problems will help us develop better compliance programs going forward.

But, as Congressman Connolly noted, we have advised that we cannot do this alone. We need the help of Congress, which can greatly assist our efforts both on the EITC and on refund fraud by enacting several proposals in the administration's fiscal 2015 budget.

One would accelerate the due dates of third-party information returns, which would allow us to match these documents against income tax returns earlier in the filing process and allow us to more quickly spot errors and potential fraud.

Another legislative proposal would provide the IRS with greater flexibility to address what are called correctable errors, which would allow us to automatically fix more areas on return—errors on returns prior to paying the refund than we can do now.

Now, if we see an error, the only way we can correct it is through an audit. We do on the average of 500,000 audits a year, but we are not going to be able to audit our way out of this problem.

The administration has also proposed expanding IRS access to information in the National Directory of New Hires to cover general tax administration purposes, which would include such things as data matching and verification of taxpayer claims during return processing.

We would hope that Congress would enact these proposals to explicitly authorize us to regulate paid tax preparers as well. Given that more than half of returns for EITC refunds are done by paid preparers, this proposal would be an important addition to our efforts to improve compliance in the area.

This is the first time we have pulled these legislative proposals together as a package. Some of them have been out for some time. But all of them would allow us to improve our ability to deal with EITC refund fraud.

Even with those changes, which would be extremely helpful, a major challenge to our efforts to reduce improper payments remains our ongoing lack of resources. Without sufficient funding, our ability to proceed with any new initiatives in the area will be constrained.

I agree with Congressman Meadows. I am a believer, after 20 years in the private sector, in what do you get for what you pay.

We have noted that, with the President's proposed budget and increase in funding for the IRS of about $1.3 billion, we would produce back to you over $2 billion in enforcement revenues.

Our estimate is that, with the legislative proposals and the resources, we would protect an additional $4 billion in EITC improper payments from going out and we would improve customer service levels, which we think this year are going to fall to 53 percent.

With the budget resources, we would improve our taxpayer services to 80 percent. We stand behind those numbers and would be willing to be held accountable for them.

I also have a prepared statement that I am happy to submit for the record.

We will continue to look forward to working with Congress to find a solution to the problems we face in the improper refund area.

Thank you very much.

[The statement of Mr. Koskinen follows:]

WRITTEN TESTIMONY OF
JOHN A. KOSKINEN
COMMISSIONER
INTERNAL REVENUE SERVICE
BEFORE THE
HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE
SUBCOMMITTEE ON GOVERNMENT OPERATIONS
ON IRS ACTIONS TO REDUCE IMPROPER PAYMENTS
JULY 9, 2014

I. INTRODUCTION

Chairman Mica, Ranking Member Connolly and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the IRS' efforts to stop improper payments in a number of high-priority areas: refund fraud caused by identity theft; the misuse of Individual Taxpayer Identification Numbers (ITINs); and erroneous claims for refundable tax credits, particularly the Earned Income Tax Credit (EITC).

Enforcement of the tax laws is a critical component of the U.S. tax system, as it enhances voluntary compliance with these laws. The IRS carries out a robust enforcement program that includes: a balanced examination program to help ensure that taxpayers accurately report their income, deductions and credits; a collection program, which seeks to collect assessed tax liabilities; and efforts to reduce tax fraud, which involve detecting and stopping fraudulent schemes and investigating these crimes. Taken together, the IRS' enforcement activities collected approximately $53.3 billion in taxes and penalties in Fiscal Year (FY) 2013. It is important to point out that for every dollar the IRS spends enterprise-wide, the return on investment (ROI) is more than $4.

The IRS continuously seeks to enhance and improve its enforcement efforts, particularly as they relate to improper payments. The IRS has made significant progress in several key enforcement programs, as I will explain in greater detail below. But in attempting to make further progress, we face several challenges.

One challenge is the sheer volume and complexity of tax fraud schemes. The tactics employed by unscrupulous individuals who commit these crimes are constantly evolving. This is particularly true in the case of refund fraud involving identity theft. In this area, we are having success in stopping small-scale fraud, but that means that we increasingly face sophisticated large-scale schemes perpetrated by organized criminals. Another related challenge is the need to further upgrade our technology. Criminals are hard at work reverse engineering our fraud filters, and we need new tools and technology in order to develop more sophisticated refund fraud filters and better taxpayer authentication procedures.

Our most serious challenge is the difficult budget environment we find ourselves in. The work we are already doing on reducing improper payments involves a difficult balance of resources and staffing at a time when our budget has been reduced significantly. Our funding for FY 2014 was set at $11.29 billion, which is more than $850 million below our level in FY 2010. Over the same time period, we lost almost 10,000 full-time permanent employees. It is important to note that the IRS continues to operate at near sequestration levels.

The solution to the funding problem we face begins with the Administration's FY 2015 budget request, which, with the inclusion of the program integrity cap adjustment and the Opportunity, Growth and Security Initiative, totals $12.64 billion. This is approximately $1.35 billion above the FY 2014 enacted level. This amount includes a $480 million program integrity cap adjustment to vitalize tax compliance and a $165 million additional investment through the Opportunity, Growth and Security Initiative to deliver performance enhancements that taxpayers deserve.

In the absence of these additional resources, our ongoing funding shortfall has major negative implications for taxpayers and the tax system in general and our efforts to reduce improper payments in particular.

II. IRS EFFORTS TO REDUCE IMPROPER PAYMENTS

Making Progress on Identity Theft

The IRS has a comprehensive and aggressive identity theft strategy that focuses on preventing refund fraud, investigating these crimes, and assisting taxpayers victimized by identity thieves. Fighting refund fraud caused by identity theft is an ongoing battle for the IRS, one where we have made significant progress in the last couple of years. But we realize that more needs to be done, and we are continuing to improve our processes to the extent that our funding situation will allow.

It is important to point out that preventing refund fraud involves a delicate balance because the IRS has a dual mission when it comes to issuing refunds. We must balance the need to issue refunds in a timely manner with the need to ensure that claims are proper and taxpayer rights are protected. Years ago, taxpayers could expect to wait several weeks for a refund. Now, however, with well over 80 percent of individuals filing their returns electronically and a large portion of them requesting direct deposit of their refund, the vast majority of taxpayers now receive their refund in 21 days or less from the time of filing. The speed in refund issuance presents an enforcement challenge since we typically receive the third-party information reporting needed to verify information reported on returns long after the refund is issued. Our ability to identify mismatches earlier in the process, and thus do a better job of stopping improper payments, would be greatly helped by the enactment of a legislative proposal in the

Administration's FY 2015 budget that would accelerate the filing due date for certain information returns. That proposal is discussed in greater detail later in this testimony.

Refund fraud detection

The IRS stopped 5 million suspicious returns in Calendar Year (CY) 2012 – up from 3 million suspicious returns stopped in CY 2011. This upward trend has continued and in CY 2013 we stopped 5.7 million suspicious returns, worth more than $17.8 billion. This year, through the end of May, about 3.7 million suspicious returns have been stopped, and we expect the number for the full year to be close to the total number stopped in CY 2013.

In 2008, we began placing an indicator on the accounts of taxpayers who had experienced identity theft. These indicators initially served two primary purposes: to speed up account reconciliation for the legitimate taxpayer and to reduce the likelihood that a taxpayer's information could be used for a fraudulent refund claim in subsequent years.

In 2011, we launched a pilot program to test the Identity Protection Personal Identification Number (IP PIN). The IP PIN is a unique identifier that authenticates a return filer as the legitimate taxpayer at the time the return is filed. The IP PIN is sent to the taxpayer immediately before the filing season for use on the return that will be filed during that filing season and is valid for only one filing season. The growth in the use of the IP PIN has been significant, from 250,000 IP PINs issued in filing season 2012 to more than 1.2 million IP PINs issued to victims of identity theft in the filing season just completed.

We also offered a limited pilot program for the 2014 filing season to test the idea of issuing IP PINs to individuals who have not previously been identity theft victims. Under the pilot, we offered certain taxpayers who filed a tax return last year from Florida, Georgia, or the District of Columbia an opportunity to apply for an IP PIN. We selected Florida, Georgia, and the District of Columbia for the pilot because they have the highest per-capita percentage of tax-related identity theft. Based on the results of this pilot, we will consider whether to expand issuing IP PINs to taxpayers in other locations.

Over the last two fiscal years the IRS has made numerous improvements in our efforts to protect identifying information, as well as catch fraud before refunds are issued:

- We have implemented new identity theft screening filters to improve our ability to spot false returns before we process them and issue refunds. We have also accelerated, to the extent we can under present law, the use of information returns in order to identify mismatches earlier.

- In cases where dozens or even hundreds of refunds go to a single bank account or single address, we added identity theft filters that flag these multiple refund situations for further review. We are also limiting the number of refunds that can be electronically deposited into a single financial account. Starting in January, direct deposit will be limited to three refunds into one account. Any subsequent refund will automatically be converted to a paper check and mailed to the address on the tax return. We will send out notices to those taxpayers informing them that their refunds are being mailed and they should expect to receive them in about four weeks from the date of the notice.

- We have implemented a variety of mechanisms to stop the growing use by criminals of deceased individuals' identity information to perpetrate tax fraud. We routinely lock accounts of deceased taxpayers, and have locked more than 25 million accounts to date. Also, the Bipartisan Budget Act of 2013 included the Administration's proposal to limit public access to the Death Master File, which should further help to reduce identity-theft related tax fraud.

- We have developed better procedures to use information about identity theft victims received from law enforcement officials who discover this information in the course of investigating identity theft schemes or other criminal activity. We use the data to flag taxpayer accounts and block returns filed by identity thieves.

- Another important part of protecting taxpayers' identities involves the IRS' Social Security Number (SSN) Elimination and Reduction program. Under that program, we eliminate or reduce the use of SSNs within our systems, forms, notices and letters where the collection or the use of the SSN is not necessary. To date, we have eliminated or reduced the use of SSNs on 70 different non-payment notices that we mail to taxpayers. Also, we recently began to deploy SSN masking on eight additional notices with an annual estimated volume of 36 million notices mailed to taxpayers who request installment agreement payments.

- The Treasury Department and the IRS are also in the process of finalizing proposed regulations (REG-148873-09) allowing persons that are required to furnish tax-related documents to taxpayers to use a truncated taxpayer identification number (TTIN) on the taxpayer's copy of any tax-related document. A TTIN includes the SSN and ITIN.

- We have developed procedures to better stop the processing of fraudulent returns from prisoners. In FY 2013, we stopped more than 163,000 fraudulent returns filed by prisoners, representing approximately $1.2 billion in refunds. We have been helped by a number of actions in this area, including the Bipartisan Budget Act of 2013, which gives the

Treasury Department the Social Security Administration (SSA) the authority to share its Prisoner Update Processing System (PUPS) data with Treasury. Additionally, the IRS has collaborated with the Federal Bureau of Prisons, as well as Departments of Correction (DOC) in states that choose to partner with us by establishing agreements for the IRS to share information with these partners that helps to identify and address non-compliant prisoner returns before any refunds are released and refer certain prisoners for prosecution of refund fraud. Our authority to share return information with prisons, made permanent in the American Taxpayer Relief Act of 2012, helps us with these efforts.

- We are collaborating with software developers, banks, and others to determine how we can better address identity theft and prevent federal monies from reaching the hands of identity thieves. For example, we established the External Leads Program for receiving leads from financial institutions that have agreed to participate in the program. In 2013, 286 institutions participated in the program, which resulted in 198,000 returned erroneous tax refunds totaling $574 million.

- To combat the fraudulent use of prepaid debit cards, the IRS has also established relationships with representatives of the prepaid access card industry. This has enabled us to leverage their security protocols designed to detect and prevent fraudulent use of prepaid cards. In many cases, these companies can identify potentially fraudulent tax refunds and freeze or cancel the cards.

The IRS' current fraud detection capability is strong but limited by our current funding levels. Our significantly improved refund fraud system, the Return Review Program (RRP), has had its development delayed due to funding constraints. If fully deployed, the program would make it much easier for us to adjust our filters during the filing season as new schemes appear. Despite the delay in developing RRP, we continue to use computer systems like the Electronic Fraud Detection System (EFDS) to combat identity theft. EFDS performs well in providing protections to taxpayers and the tax system, but it is a rigid system that cannot be easily updated during filing season. We also use our Dependent Database (DDb) system to identify identity theft returns. The DDb system is flexible, and we are able to program new filters quickly as we identify new schemes. So far this year, we have stopped more than 900,000 potential identity theft returns through DDb.

We will continue to improve our identity theft identification and prevention program in filing season 2015. Our budget request includes an initiative that provides the staffing and advanced technologies required to support the increased workload. The components of our initiative include assisting victims of identity theft; expanding the criminal investigation identity theft clearinghouse that processes identity theft leads; and investing in information technology projects

that will protect taxpayer information, help verify potentially fraudulent identity theft tax returns, and reduce erroneous payments. Our plans include obtaining the SSA's PUPS data to help reduce prisoner-related tax fraud and continuing development of RRP to the extent that our funding situation allows.

Even with the progress we have made and continue to make in the battle against refund fraud, I have asked our senior leadership team to reevaluate everything we are doing and to consider additional steps we could take to reduce refund fraud. As discussed later, this will require some assistance from the Congress with regard to legislative changes.

Assisting victims

Being victimized by identity theft is a frustrating, complex situation. The IRS has 3,000 people working directly on identity theft-related cases – more than double the number in late 2011. And we have trained 40,000 employees who regularly work with taxpayers to help with identity theft situations when they arise.

Critical to the IRS' efforts to assist identity theft victims is our Identity Protection Specialized Unit, which provides taxpayers with a single point of contact at the IRS via a special toll-free telephone line. We also have several identity theft specialized groups to assist with processing identity theft cases.

During FY 2012, the IRS reengineered its identity theft process to close cases more efficiently, accurately and in a less burdensome manner. In FY 2013, taxpayers who became identity theft victims had their situations resolved in roughly 120 days, far more quickly than in previous years when cases could take over 300 days to resolve. While this marks a significant improvement, we are continuing to work to find ways to shorten this time and ease the burden identity theft places on these victims. In CY 2013, the IRS worked with victims to resolve and close approximately 963,000 cases. So far in CY 2014, more than 368,000 cases have been closed and our backlog has been reduced from 204,000 cases last year at this time to 121,000 cases now.

Investigating fraud-related crimes

The investigative work done by the IRS is a major component of our efforts to combat tax-related identity theft. IRS Criminal Investigation (CI) investigates and detects tax and other financial fraud, including fraud related to identity theft. CI recommends prosecution of refund fraud cases, including cases involving identity theft, to the Department of Justice.

So far in FY 2014, CI has opened more than 821 new investigations into identity theft and refund fraud schemes, bringing the total number of active cases to more than 1,900. In addition, there have been 731 recommendations for prosecution and 555 sentences so far this year, with an average time to be

served of more than 43 months. Our intensified activity in the criminal investigation area in relation to identity theft-related refund fraud follows a surge in the number of investigations opened in the last two years – 900 in FY 2012 and 1,500 in FY 2013.

State and local law enforcement agencies also play a critical role in fighting identity theft. CI regularly collaborates with these agencies, and, in March 2013, the IRS announced the nationwide expansion of the Law Enforcement Assistance Program, which began as a pilot program in Florida in 2012. This program provides for the disclosure of federal tax returns and return information associated with the accounts of known and suspected victims of identity theft when the victim provides express written consent for disclosure. To date, more than 5,900 waivers have been provided in 47 states.

One excellent example of our collaborative work with state and local law enforcement in the area of identity theft involves CI's participation in the Tampa Bay Identity Theft Alliance. Formed in July 2012, the Alliance comprises 20 federal, state and local law enforcement agencies and prosecutors in Florida's Tampa Bay area. As part of the Alliance, CI has sworn in more than 30 state and local law enforcement investigators as "Special Detailed IRS-CI Criminal Investigators," commonly referred to as Task Force Officers. CI has also provided these investigators training and additional prosecutorial tools available to federal law enforcement. In the Alliance's first year alone, cooperation among its members led to the arrest and subsequent indictment of numerous individuals who were attempting to perpetrate identity theft-related tax fraud. For example, the Tampa field office had more than 100 indictments in FY 2013 alone. Overall, the Alliance has prevented millions of dollars from being diverted to these criminals.

Many Florida law enforcement personnel have publicly noted the Alliance's accomplishments. For example, Jane Castor, the chief of the Tampa Police Department, said the Alliance "has made tremendous progress in combating tax fraud by fast-tracking the investigations and prosecution of cases," which sends "a strong message to offenders that committing tax fraud in Tampa will result in lengthy federal prison sentences." In addition, last year the Alliance was recognized as the "2013 Task Force of the Year," by the International Association of Financial Crimes Investigators. This is a national award given for investigative excellence and outstanding public service.

Improvements to the ITIN Program

ITINs may be used in the filing and collection of taxes from foreign nationals, resident and non-resident aliens, and others who have filing or payment obligations under U.S. law but who do not qualify for an SSN. The IRS has taken steps to improve the process of issuing ITINs in order to verify the applicant's

identity and foreign status. We will continue to strengthen our efforts in this critical and complex area.

Last week, the IRS announced that ITINs will expire if not used on a federal income tax return for five consecutive years. The new, more uniform policy applies to any ITIN, regardless of when it was issued. Only about a quarter of the 21 million ITINs issued since the program began in 1996 are being used on tax returns. The new policy will ensure that anyone who legitimately uses an ITIN for tax purposes can continue to do so, while at the same time resulting in the likely eventual expiration of millions of unused ITINs.

ITIN application process

Under procedures in place since last year, the IRS, with few exceptions, only issues ITINs to taxpayers and dependents who provide original documentation, such as passports and birth certificates, or copies of these documents certified by the issuing agency, to verify their identity. These procedures also include tighter requirements for becoming a Certifying Acceptance Agent (CAA) and remaining in the CAA program. CAAs play an important role in the ITIN application process as intermediaries who review identity documents of the applicant. Under the tighter requirements, CAAs must certify to the IRS that they have verified the authenticity of the original or issuing agency-certified documents supporting the ITIN application. CAAs are also now required to undergo forensics training, and the IRS has begun compliance reviews of CAAs.

The IRS has also begun flagging ITIN applications containing characteristics of questionable traits at the time of input. This action, which is discussed in more detail below, will provide greater assurance that fraudulent applications are identified and stopped. We will prepare a risk assessment that, in addition to determining the scope and costs of programming, will address other mitigating controls that we can implement if the requested programming changes are not funded.

Investigating and detecting ITIN fraud

Reducing refund fraud involving the misuse of ITINs, in which individuals use ITINs to file returns claiming tax credits to which they are not entitled, continues to be a priority for the IRS, and we have made important progress in this area. Our CI division has increased investigative time spent on ITIN investigations by approximately 400 percent since 2008. Between 2008 and June 15, 2014, CI identified approximately 2,733 ITIN schemes that encompassed more than 323,700 returns with ITINs. Several fraud detection filters are in place specifically to help detect issues with the Child Tax Credit (CTC) and Additional Child Tax Credit (ACTC).

Notably, last year the IRS detected specific patterns indicating potential fraud in returns with ITINs and was able to develop filters on a real-time basis during the filing season to stop these refunds from being issued. In addition, we have developed new methods of clustering suspicious returns together to catch large numbers of returns that appear similar. These clusters include identifying multiple returns using the same address or the same filing and refund patterns.

Strengthening Tax Compliance in Regard to Refundable Credits

Refundable tax credits play an important role in fulfilling Congressional policies, but they are subject to a number of tax administration challenges. There are numerous refundable credits currently administered by the IRS, including the EITC, the CTC, and the American Opportunity Tax Credit (AOTC). As stated above, the IRS has a dual mission when it comes to administering refundable credits. We must balance the mandate to get refunds out as quickly as possible to those who qualify with the need to ensure that the money goes only to individuals who are eligible to receive it.

There are a number of factors that present challenges to our compliance efforts as they relate to refundable credits. They include the following:

- *Complexity*. Complexity in the rules governing eligibility for and the operation of certain refundable credits creates challenges for both taxpayers and the IRS. Mistakes in the application of the law cause a significant portion of claims that are made in error.

- *Lack of Third-Party Data*. In many cases, the IRS lacks third-party data sources that could be used to verify taxpayers' eligibility. Even if data exists, the IRS is often in the position of having to process returns and determine the validity of a refund claim before receiving the third-party data that could be matched against the return to verify information on the return. For example, Form 1099 information returns, which help the IRS determine a taxpayer's compliance with federal tax obligations, are generally due to the IRS by March 31 when filed electronically, which is after the time most refunds are processed. This problem could be partially addressed by enacting the Administration's FY 2015 budget that would accelerate the filing due date for certain information returns, as discussed below.

- *Cash Payments*. Refundable credits allow for payments beyond income tax liability. This makes refundable credits particularly enticing targets for certain types of fraud.

Given these challenges, the IRS has dedicated significant attention and resources to improving tax compliance in regard to claims made for refundable

credits in order to reduce improper payments. One of the biggest enforcement priorities for us in this area is the EITC.

Enforcing EITC rules

Congress created the EITC as part of the Tax Reduction Act of 1975, in part to offset Social Security taxes. The credit has evolved into an important program that now lifts millions of children and families above the poverty line each year.

To qualify to claim the EITC, individuals generally must: have earned income; have a valid SSN for themselves and for each qualifying child they claim; meet certain limits on filing status and income; have investment income of no more than a certain amount; and be a U.S. citizen or resident alien for the entire year for which the credit is claimed.

The amount of the EITC that an individual may claim varies based on whether the individual has any qualifying children, and if so, the number of qualifying children that the individual is able to claim. For a child to be considered a qualifying child, the following tests must be met:

- *Age:* The child must be under age 19 at the end of the year (under age 24 in the case of a student) and younger than the taxpayer (or younger than both the taxpayer and the taxpayer's spouse if filing a joint return), or the child must be permanently and totally disabled at any time during the year for which the EITC is claimed;

- *Residency:* The child must have lived with the taxpayer for more than half of the year for which the credit is being claimed, although certain exceptions to this rule apply; and

- *Relationship*: The child must be the taxpayer's son, daughter, stepchild, eligible foster child, brother, sister, stepbrother, stepsister, or a descendant of any of these individuals, such as a grandchild, niece, or nephew. Adopted children also qualify, including those lawfully placed with the taxpayer for legal adoption.

In addition, a taxpayer claiming the credit cannot be the qualifying child of another taxpayer, and cannot use the "married filing separately" filing status. Additional requirements apply for individuals who do not have qualifying children. Given the complex nature of the rules governing eligibility, the IRS engages in significant education and outreach efforts so that taxpayers are aware of their potential eligibility for the credit.

Our research has determined that most of the errors made by individuals claiming the EITC fall into three main categories. The largest group in terms of erroneous dollars claimed involves instances where an individual claims as a

qualifying child a person who fails to meet one or more of the requirements described above. The second-largest group of errors, in terms of dollars claimed, involves income misreporting, and the third largest group involves individuals who incorrectly claim the "single" or "head of household" filing status when they should have used the "married filing jointly" or "married filing separately" filing status.

The IRS' EITC-focused enforcement programs currently protect approximately $4 billion annually. The following programs contribute to the broader strategy of identifying improper EITC refund claims as early in the process as possible:

- *Math error.* This refers to an automated process in which the IRS has been granted statutory authority to identify certain math or other computational errors on the return and automatically adjust the return for a taxpayer. For example, math error procedures can be used to disallow or adjust EITC claims when there is a missing or incorrect SSN for a child used to qualify for EITC.

- *Document matching.* This process involves comparing income information provided by the taxpayer with information from third-party returns, such as Form W-2 and Form 1099, to identify discrepancies. For example, through document matching, the IRS may identify discrepancies in income reporting, which can impact EITC eligibility. The IRS conducted almost one million of these reviews in FY 2013, in addition to 500,000 audits.

- *Examinations.* The IRS identifies tax returns and amended returns for examination and in most cases holds the EITC portion of the refund until an audit can be completed. Of the approximately 500,000 EITC audits conducted by the IRS each year, 70 percent are conducted before the EITC portion of the refund is paid. The tax returns to be examined are selected using an effective risk-based audit selection model, resulting in changes to more than 90 percent of returns. Examinations protect almost $2.1 billion against improper EITC refund claims each year.

- *Soft notices.* The IRS uses what is commonly called a soft notice as a low-cost alternative to audits and an inexpensive way of recovering payments. Contrary to a statutory notice of deficiency, which provides the taxpayer with the right to appeal to Tax Court when the IRS is making an assessment to the taxpayer's account, soft notices are non-statutory reminders to comply. They serve as notification to the taxpayer that the IRS is reviewing their compliance, and they encourage the taxpayer to self-correct their tax return before an assessment is made by the IRS. In FY 2013, the IRS sent more than 110,000 letters to alert taxpayers that an exemption or qualifying child for the EITC claimed on their returns had also been claimed by another person.

- *Two- and 10-year bans*. Under section 32(k), the IRS is authorized to ban taxpayers from claiming the EITC for two years if it determines during an audit that they claimed the credit improperly due to reckless or intentional disregard of the rules. The IRS can impose a 10-year ban in cases of fraud. When a ban is imposed, taxpayers are provided their full appeal rights to challenge the ban. Last year there were more than 67,000 two-year bans and 45 10-year bans in effect.

The IRS continues working to improve and expand its existing compliance efforts to stop improper EITC payments. Notably, our increased efforts in regard to identity theft-related fraud detection have helped improve EITC enforcement results.

In spite of these accomplishments, it is important to note the significant degree of difficulty in enforcing compliance with the EITC, which derives in large part from its eligibility requirements. EITC eligibility depends on complex rules that may be difficult for taxpayers to understand and on items that the IRS cannot readily verify through third-party information reporting, including marital status and the relationship and residency of children. In addition, the eligible population for the EITC shifts by approximately one third each year, making it difficult for the IRS to use prior-year data to assist in validating compliance.

Given this situation, and given that approximately 57 percent of the returns claiming the EITC in recent years are prepared by tax return preparers, we believe that one of the keys to driving increased EITC compliance continues to be strategic programs addressed to the return preparer community. Examples of our preparer-related activities include: compliance and warning notices sent before and during the filing season to preparers who prepare large numbers of EITC returns to educate them on their responsibilities and the consequences of noncompliance; preparer audits done by field examiners to make sure preparers are complying with EITC due diligence rules; and "knock-and-talk" visits to preparers by CI agents and auditors, to educate them on EITC laws.

Additionally, the IRS has expanded its traditional treatment of EITC preparers to test a new early-intervention program. Over the last few years, the IRS has employed data analytics to significantly reduce improper payments associated with the EITC, as well as the CTC. Using this approach, the IRS ran a small data-driven pilot in 2012 to identify a group of tax return preparers with a history of submitting incorrect or potentially fraudulent tax returns falsely claiming the EITC, then designed and implemented interventions with these preparers to stop improper claims. The interventions included letters, calls, and site visits to selected preparers, both before and during tax filing season, to allow preparers to immediately adjust their practices.

An expanded preparer pilot in 2013 included a broader set of randomly selected preparers and a broader set of interventions, including the addition of preparer-

focused taxpayer audits (for returns that otherwise would have qualified for audit even absent the pilot). Many preparers whose error rates did not improve as a result of interventions during the 2012 pilot did improve in 2013 after being subject to additional intervention. Preparers who had improved due to IRS interventions during the initial 2012 pilot generally maintained their improved compliance with respect to EITC and related tax credits claimed on returns and claims filed during 2013.

Use of interventions for preparers before and during the filing season continued on an expanded basis in 2014. Since this approach has been used, improper EITC payments have been reduced by more than $1.5 billion over three years for returns prepared by preparers who received the interventions.

In addition to these specific preparer-related EITC programs, the IRS has looked at return preparer compliance more broadly. Beginning in 2010, anyone who prepares all, or a substantial portion of, a federal tax return for compensation must register with the IRS, obtain a Preparer Tax Identification Number (PTIN) which they include on returns they sign, and renew their registration each year. Since 2010, more than a million individuals have registered with the IRS, and we currently have more than 680,000 return preparers active in our PTIN database.

PTINs assist our enforcement efforts by allowing the IRS to collect more-accurate data on who is preparing returns, the volume and types of returns being prepared, and the qualifications of those doing return preparation. Additionally, PTIN data is essential in determining where to direct compliance and educational outreach efforts for erroneously prepared tax returns.

Basic competency for paid tax return preparers is also essential for accurate return preparation. Currently, about 60 percent of tax return preparers operate without any type of oversight or education requirements. In the FY 2015 Budget, the Administration proposed that Congress provide the Treasury Department and the IRS with legislative authority to regulate tax return preparers, which is a proposal discussed in more detail below. Until legislation is enacted, the Treasury Department and the IRS have established an Annual Filing Season Program designed to encourage tax return preparers who are not attorneys, certified public accountants (CPAs), or enrolled agents (EAs) (in other words, not credentialed preparers) to improve their knowledge of federal tax law. An unenrolled tax return preparer who successfully completes continuing education, including a six hour federal tax law refresher course with a test, will receive an Annual Filing Season Program – Record of Completion from the IRS. They will also be included in a database with credentialed preparers on IRS.gov that will be available by January 2015 to help taxpayers determine return preparer qualifications during the 2015 filing season.

This Annual Filing Season Program will be an interim step until legislation is enacted to help protect taxpayers during the 2015 filing season and to help ensure more accurate return preparation and improved tax compliance. Despite all of the efforts described above, we continue to be concerned that the improper payment rate for the EITC has remained unacceptably high throughout the program's history. (For FY 2013, the EITC improper payment rate was between 22 and 26 percent.) Therefore, we recently initiated a major review of our activities in this area. As part of this review we are assessing our many past and current efforts and are exploring new possibilities, such as finding more-efficient ways to distinguish valid claims from excessive claims. We also believe that enactment of the legislative proposals presented next will play a critical role in our effort to lower the EITC improper payment rate.

Administration's Legislative Proposals

Congress can help us further enhance our efforts to reduce improper payments, particularly those involving the EITC, by approving a number of legislative proposals contained in the Administration's FY 2015 Budget, including the following:

- ***Correctible error authority***. As noted above, the IRS has limited statutory authority, known as "math error authority," to identify certain computation or other irregularities on returns and automatically adjust the return for a taxpayer. These upfront systemic processing checks protect approximately $320 million in improper EITC payments annually. At various times, Congress has expanded this limited authority on a case-by-case basis to cover specific newly enacted tax code amendments. The Administration's proposal would replace the existing specific grants of this authority with more general authority covering computational errors and incorrect use of IRS tables. Further, the proposal would expand IRS' authority by creating a new category of "correctible errors," allowing the IRS to fix errors in several specific situations, such as when a taxpayer's information does not match the data in government databases. Without correctible error authority, any obvious errors in a return can only be fixed after an audit, which requires far more resources than we presently have. The result is improper payments are not stopped or collected.

- ***Acceleration of information return filing due dates***. Under current law, most information returns, including Forms 1099 and 1098, must be filed with the IRS by February 28 of the year following the year for which the information is being reported, while Form W-2 must be filed with the SSA by the last day of February. The due date for filing information returns with the IRS or SSA is generally extended until March 31 if the returns are filed electronically. The Administration's proposal would require information returns to be filed with the IRS (or SSA, in the case of Form W-2) by January 31, except that Form 1099-B would have to be filed with the IRS by February 15. The proposal would also eliminate the extended due date for electronically filed returns.

- ***Authority to regulate return preparers.*** In light of the recent court decision striking down the IRS' authority to regulate unenrolled and unlicensed paid tax return preparers, the Administration's proposal would explicitly authorize the IRS to regulate all paid preparers. The regulation of all paid preparers, in conjunction with diligent enforcement, will help promote high quality services from tax return preparers, improve voluntary compliance, and foster taxpayer confidence in the fairness of the tax system. Significant harms to the tax system are caused by incompetent and dishonest preparers, including increased collection costs, reduced revenues, the burden placed on taxpayers by the submission of incorrect returns on their behalf, and a reduction in taxpayers' confidence in the integrity of the tax system.

- ***Due diligence***. Return preparers who prepare tax returns on which the EITC is claimed must meet certain due diligence requirements to ensure their clients are in fact eligible to receive this credit. In addition to asking questions designed to determine eligibility, the preparer must complete a due diligence checklist (Form 8867) for each client and file the checklist with the client's return. The Administration's proposal would extend the due diligence requirements to all federal income tax returns claiming the CTC and the ACTC. The existing checklist would be modified to take into account differences between the EITC and CTC.

There are a number of other legislative proposals in the Administration's FY 2015 Budget request that would also assist the IRS in its efforts to combat identity theft. One of the most significant would be to amend the Social Security Act to expand IRS access to information in the National Directory of New Hires for individual income tax administration purposes, including data matching, verification of taxpayer claims during return processing, preparation of substitute returns for non-compliant taxpayers, and identification of levy sources.

Other legislative proposals in the Administration's FY 2015 Budget request that would assist the IRS in its efforts to combat identity theft include the following: giving Treasury and the IRS authority to require or permit employers to mask a portion of an employee's SSN on W-2s, an additional tool that would make it more difficult for identity thieves to steal SSNs; adding tax-related offenses to the list of crimes in the Aggravated Identity Theft Statute, which would subject criminals convicted of tax-related identity theft crimes to longer sentences than those that apply under current law; and adding a $5,000 civil penalty to the Internal Revenue Code for tax-related identity theft cases, to provide an additional enforcement tool that could be used in conjunction with criminal prosecutions.

III. CONCLUSION

Chairman Mica, Ranking Member Connolly and members of the Subcommittee, thank you again for the opportunity to discuss our efforts to reduce improper payments, in particular as they relate to refund fraud, misuse of ITINs and

erroneous claims for refundable tax credits. I remain concerned about our ability to continue to make progress in all of these areas in light of our ongoing difficult budget environment. I believe it is vital that we find a solution to our budget problem, so that the IRS can be on a path to a more stable and predictable level of funding. I look forward to working with Congress and this Committee to do just that. This concludes my statement, and I would be happy to take your questions.

Mr. MICA. Thank you.

And, without objection, your entire statement will be made part of the record.

We will now turn to questions. And, actually, I will start first with the IRS Commissioner.

Right now about 25 percent of the Earned Income Tax Credit requests that are put into IRS are improperly paid. It is 24-point-something percent. Is that correct?

Mr. KOSKINEN. That is the number. Yes.

Mr. MICA. Yeah. You outline some measures of spending some more money and, also, asking for some more authority.

In the improper payments that we are talking about, we are not also including fraudulent returns.

Mr. KOSKINEN. They are included. No. They——

Mr. MICA. They are?

Mr. KOSKINEN. Part of the EITC problem are fraud, fraud by tax preparers, fraud by applicants. As I noted, one of the reasons we want to have authority to regulate tax preparers——

Mr. MICA. Okay. Let me be a little bit more specific, then.

We didn't include identity theft in that category. Right?

Mr. KOSKINEN. No. Identity theft and the refund fraud generally are erroneous payments, but they are not categorized in the EITC improper payment category. But within the EITC area, the improper payments do include fraud as well as mistakes.

Mr. MICA. Have you had any outside consultants look at what is going on? I mean, this is a staggering rate. Nearly a quarter of all of these returns receive an improper payment, for billions of dollars.

Has there been someone that has looked at this and analyzed the—sort of the errors of your way or audited to come up with suggestions? Is this an internal set of recommendations?

Mr. KOSKINEN. These are recommendations that are based on the experience we have had over the 8 to 10 years thus far, not very successfully dealing with this problem.

Mr. MICA. But, again, I come from the private sector and, when you have got a—I couldn't function. I would have to close down my business if I had a 20—close to 25 percent error rate on payments.

Almost any business would go out of business. The difference here is you have an unlimited resource, and that is taxpayer dollars.

But has there been anyone outside that has been retained to look at this problem, that you know of? And I know, John, you have only been there since the beginning of the year.

Mr. KOSKINEN. No. We have had a series of audits by the Inspector General, reviews by GAO. We have not, to my knowledge,had anyone outside of the Agency actually look at this. But we have had, as I say, a lot of experience.

The legislative proposals being pulled together results from, as I say, the working groups we have had over the last 6 months saying, "If you needed"—"If you are a blank slate, what would it take to actually begin to attack the problem?"

Mr. MICA. Let me ask you another question.

Mr. Connolly and I have done a lot of work on IT. He has actually done a lot more. About half of this $84 billion they spend every year is wasted.

Part of your detecting this fraud is also done through electronic means. Is that not correct?

Mr. KOSKINEN. That is correct.

Mr. MICA. Okay.

Mr. KOSKINEN. We have filters and analyses that we make.

Mr. MICA. Exactly.

Well, something isn't catching a huge number. 25 percent is just off the chart. And it is a pretty technical operation.

Again, you are looking at electronic review of these returns and money going out and—like water over Niagara Falls. But there is something—some disconnect.

Mr. KOSKINEN. Yes. And part of it is we identify——

Mr. MICA. Are you asking for more money for personnel or more money for technical equipment? And what——

Mr. KOSKINEN. As I say, we——

Mr. MICA. What is the mix?

Mr. KOSKINEN. The mix is—the amount of money we need for EITC fraud is relatively modest. We do need continued support, but it is, you know, a couple hundred million dollars for the return review program that we have been trying to get——

Mr. MICA. But that is a tactic—that is a tactical improvement?

Mr. KOSKINEN. Yes.

Mr. MICA. Software——

Mr. KOSKINEN. Technical improvement would allow us to improve our thing.

But what we really need—we already——

Mr. MICA. See, again, I think—again, I just don't believe that this solution that you are bringing to us is really going to do it.

Mr. KOSKINEN. Well, let me explain a little more, if I could.

Mr. MICA. Yeah.

Mr. KOSKINEN. The correctable error authority would allow us where we see an error in the refund, which is just legislative authority——

Mr. MICA. This is just legislative language. That costs nothing. We can pass that.

Mr. KOSKINEN. I understand. No. No. That is what my point is.

Mr. MICA. I don't see a problem with those requests.

Mr. KOSKINEN. Right.

Mr. MICA. I am talking about personnel versus the technical equipment that it is—I mean, you can't possibly do these returns and some guy, you know, with his spectacles looking at——

Mr. KOSKINEN. Exactly. Our view is exactly that, that there is no way for us to audit our——

Mr. MICA. And you are saying that is a couple-hundred-million-dollar solution versus a multi-billion-dollar solution.

Mr. KOSKINEN. We already——

Mr. MICA. And I don't—I don't have a problem there. But, again, I don't have the greatest faith, based on our most recent hearings, in your technical capability as far as computers and data and all of that and even retaining it.

A simple question: How long do you keep the records—the electronic records on this data?

Mr. KOSKINEN. The electronic records for taxpayers are kept for years. We have some records for States that go back 50 years.

Mr. MICA. Okay. And—well, again, we have had our issues with emails and other communications. Records can go back to 50 years. These you have pretty accurate information and it is entered electronically.

Mr. KOSKINEN. Yes. We save each exam file. Every taxpayer record is saved separately. It is preserved. And those go back so that we can audit 3 to 6 years' worth of returns.

Mr. MICA. Uh-huh.

Again, I am very skeptical about spending billions. I think it may take some money to upgrade software and the technical equipment that will, you know, help us reveal these fraudulent and, also, improper payments.

But, again, I have no problem. I think Mr. Connolly and I would be glad to look at the other legislative remedies that we have.

Mr. KOSKINEN. Those are the significant part——

Mr. MICA. I don't want to take too much time.

Quick question for DOD. DOD—most people don't realize it, but I understand it is not till 2017 that you'll even be capable of an audit.

Mr. EASTON. We will—the statutory requirement is to be audit-ready by 2017. By the end of 2017, we intend to go into full financial statement audit——

Mr. MICA. So I would have every reason to believe that some of the improper payment data that you are bringing forward is not totally correct or valid.

Mr. EASTON. We stand behind the numbers that we report. The fact that we don't have a clean financial opinion—in the control environment that we have, we acknowledge why those numbers are not believable, people are skeptical. We have gone to great lengths to make sure that we have done as much as we can.

Mr. MICA. And your improper payments wouldn't include—we did a hearing here. I just about fell off the chair. The guy that got the contract in Amsterdam. He wasn't an American. Remember that one?

$800-million contract to supply fresh fruits and vegetables in—I think it was Afghanistan or one of the conflict areas. He milked that into almost a $5-billion improper payment.

Is that included—that kind of thing included here?

Mr. EASTON. We—it depends on the circumstances. But I understand——

Mr. MICA. But that is a specific one. You go back and look——

Mr. EASTON. Yes, sir.

Mr. MICA. —at that one. That one knocked me off my chair when I heard that.

And there were questions raised about even his eligibility as a proper vendor. I mean, it was just astounding how he milked the taxpayer with an improper or fraudulent payment.

I would like a response from DOD on that one because I just don't—again, all the information I have is your—your auditing capability is very limited.

The information you have, financially reporting to Congress is not what we can put our faith and trust in. And we still have a long way to go before we get the accurate information.

With that, I yield to Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman. Actually, let me pick up on where you just left off.

Mr. Easton, if you can't provide an unqualified audit until 2017—and we have reason—given the long history of the Pentagon that, you know, you have got the biggest budget and often, therefore, you have the biggest problems, but the idea that you stand by your numbers makes many of us queasy on both sides of the aisle, frankly.

I hope you won't stand too strongly behind your numbers because there is every reason to believe you are understating your improper payments, not deliberately, but given the fact that you really can't provide an unqualified audit till 2017.

Do you want to comment?

Mr. EASTON. There is a—there is a lot of reasons that make a financial audit difficult in DOD, and I am convinced that we are doing a lot right. There is clearly exceptions.

The control environment, I think, will continue to improve. Next year we will begin to conduct audits of our budgetary execution.

When we have made changes—for example, GAO pointed out the statistical sampling for our commercial payments—and that has been raised before—we were using a sampling methodology that was not appropriate. We have made those adjustments.

I think that GAO's review in 2013 identified our statistical sampling has been accurate in other areas. And so we have reason to believe that the numbers are sound, but we certainly understand why the skepticism exists with the financial audit.

Mr. CONNOLLY. Well, in 2012, that same GAO noted that two of your programs were excluded from OMB's estimation of improper payments.

Those two programs, the Defense Finance and Accounting Service commercial pay and the U.S. Army Corps of Engineers commercial pay, combined were worth $400 billion.

Are they now included in the improper payments estimate?

Mr. EASTON. Yes. They are included. They were included. I think that the decision GAO made is because of the statistical sampling anomalies that they found, which have been corrected, that they excluded them in their reporting calculation.

Mr. CONNOLLY. Right.

But if we just simply applied—this is going back to Mr. Mica's point.

If we simply applied, you know, the rough rounded percentage of improper payments of the total, 4 percent, and 400 billion was excluded for those reasons, perhaps we were understating improper payments if it averaged out by $16 billion. You take the point.

Mr. EASTON. Understand.

Mr. CONNOLLY. Okay. So I just—I worry a little bit that we may actually be understating, not deliberately—I am not one who's conspiracy minded—but just because of the methodology and the lack of qualified data and sometimes excluding it for those reasons—

good reasons, but that means we are not actually getting the whole picture of improper payments.

Dr. Agrawal, I mentioned in my opening statement about the role of U.S. attorneys. And my impression has been that, when it comes to Medi-—no.

We understand Medicare fraud is a subset of improper payments. When we talk about improper payments, some of it is simple clerical error.

Sometimes the data gets, you know, mixed up. "We thought you were 66 1/2 and eligible for full Medicare or Social Security and, whoops, you are actually only 65" or whatever it may be. So—but given a big country and big numbers, that adds up.

But in the case of Medicare, there is a subset of very substantial fraud. And I cited the Boston U.S. attorney's Office, which I happen to know about, which I think was number 1 in the country last year in uncovering fraud to the tune of—and prosecuting and pursuing about $3–1/2 billion.

Now, there are—I think there are 99 U.S. attorneys in the United States. Is it your sense that every one of those U.S. attorneys is taking this issue seriously and is making it one of their priorities? Because, if they are, our ability to whittle down this part of the improper payment could be considerable.

Dr. AGRAWAL. Yeah. Thank you for the question.

I couldn't comment on every U.S. Attorney's Office. But I can tell you that OIG and DOJ are extremely focused on healthcare fraud, and we work very closely with them on investigating issues as well as taking action, initially, administrative action on our end and then law enforcement action on their end.

And I think, you know, for evidence of that, you just have to look at the HCFAC numbers that show an 8 to 1 ROI for all the HCFAC funding. That really is a combination of both the administrative actions that I mentioned and all the law enforcement work that is conducted as well.

Mr. CONNOLLY. Okay. I would just plead with you, your office and those in the position to exhort, continue to put the pressure on the U.S. Attorneys.

Because, I mean, it is easy for somebody—I mean, they have a lot of independent authority and they can set their own priorities. This needs to be one of them.

And they are a powerful tool in helping us whittle down that number and, frankly, putting perpetrators where they belong who are defrauding the U.S. taxpayer.

With that, Commissioner Koskinen, first of all, I want to clarify something because I think it was a little confusing.

Refund fraud that you cited, a subset of improper payments or are you considering it a separate subject entirely?

Mr. KOSKINEN. It is a separate subject. We track it. We treat it seriously. But it is not treated as an improper payment, per se.

Mr. CONNOLLY. Okay. If I can just stay on that, even though it is not actually the subject, then, of this hearing, given what you just said.

But this committee has also dealt with this issue of refund fraud, and I seem to recall a few years ago somebody from IRS talking

about the exponential growth in this category in just a brief 4-year period.

And if I heard you correctly, we are not talking about you setting aside suspicious returns to the tune of millions a year.

Mr. KOSKINEN. Yes. We stopped last year. Over $17 billion in suspicious refund claims.

Mr. CONNOLLY. Is this a relatively recent phenomena?

Mr. KOSKINEN. It exploded, really, in 2009 to 2012. Started in Florida, Georgia, and, oddly enough, the District of Columbia. But Florida was really the epicenter of it, and it was overwhelming law enforcement. It overwhelmed the IRS.

More recently, in the last couple of years, we have made significant progress in dealing with it.

Mr. CONNOLLY. Yeah.

And, of course, if it happens—I have constituents this has happened to.

And trying to recover the money they are legitimately owed, once the fraud occurs, is a very complicated process; is it not.

Mr. KOSKINEN. It is. We have made progress there. It used to take almost a year to deal with an identity theft victim. We are now down to about 120 days to resolve their accounts. And our backlog is down to about 120,000.

Mr. CONNOLLY. If the Chairman will indulge me, one last question?

Mr. MICA. If I might.

Mr. CONNOLLY. Yeah.

Mr. MICA. If you would yield to me for a second.

Mr. CONNOLLY. Of course.

Mr. MICA. I just—we were talking about the hearing that we held August 2nd, 2013, identity theft tax fraud. And, actually, from fiscal year 2011 to 2012, IRS saw a 78 percent increase in identity theft cases.

Now, listen to this. Taxpayer Advocate—I am sorry—Taxpayer Advocate Service, which provides assistance to victims, has seen a 650 percent increase in cases from 2008 to 2012. We will put that in the record, as we cited that.

Mr. CONNOLLY. I thank the chairman for his intervention.

And, as he knows, the—our committee in another category of bipartisan identification of problems I hope we can do something about, this problem has been highlighted by this committee.

And I appreciate Commissioner Koskinen's comment because I can just tell you—and I know my colleagues, if you have had similar casework, it can—the impact of this can range from very inconvenient to devastating, depending on the size and magnitude of the refund we are talking about and the financial circumstances of the family involved.

So a very important issue and, unfortunately, because of technology, just growing exponentially. Willie Horton once said, "I rob banks because that is where the money is." Well, today's version of that is——

Mr. MICA. IRS.

Mr. CONNOLLY. —I go after refunds because——

Mr. KOSKINEN. Let me simply stress that, over the last 2 years, with the assistance of U.S. attorneys, interestingly enough, we

have begun to make serious inroads into this. We have, as I say, cut the backlog down of identify theft.

Mr. CONNOLLY. Good.

Mr. KOSKINEN. We are stopping more with technology. More filters are more effective. But we are basically—as somebody said, we have drivenmost of the amateurs out. We are dealing with organized crime here and around the world.

Mr. CONNOLLY. Yeah. Well, it is a growing problem, and I am glad you highlighted it. Thank you.

Mr. Chairman, I don't wish to impose. I just had one more question.

Mr. MICA. Go right ahead. I have got extra time.

Mr. CONNOLLY. Okay. I thank my chairman.

And my last question has to do with EITC. Mr. Koskinen, do you know the genesis of the Earned Income Tax Credit program.

Mr. KOSKINEN. I——

Mr. CONNOLLY. That is to say, who thought it up.

Mr. KOSKINEN. Well, it has been historically supported by—on a bipartisan basis, my understanding is that President Reagan, for instance, maintained that it was his favorite job creation program, poverty program.

Mr. CONNOLLY. Yeah.

Mr. KOSKINEN. It helps the working poor. It encourages people to work.

Mr. CONNOLLY. That is exactly right.

It was actually a conservative idea. It was not a liberal idea. And it was a good one because it is not only well-intentioned, but it is designed to end dependency and to get—but to help lift people out of poverty.

But it is a complex program; is it not?

Mr. KOSKINEN. Yes. Part of the problem is every time somebody tinkers with it, it gets more complex, in terms of which children count, where they live, who has responsibility for them.

Mr. CONNOLLY. Who qualifies.

Mr. KOSKINEN. Part of the error rate is it is very complicated for preparers and tax preparers—taxpayers to even figure out what they are entitled to.

Mr. CONNOLLY. In fact—correct me if I am wrong—but my understanding is 57 percent of the returns—the EITC returns filed are actually prepared by tax return preparers. Is that correct?

Mr. KOSKINEN. That is correct.

Mr. CONNOLLY. Yeah.

That tells you a lot about the complexity. I mean, that wouldn't be happening if it were simple in determining eligibility.

Mr. KOSKINEN. And most of those preparers do a good job. But there is a significant amount of error rate, and some of it intentional on the part of preparers——

Mr. CONNOLLY. Yeah.

Mr. KOSKINEN. —some of whom take the refunds for themselves.

Mr. CONNOLLY. If we are worried about improper payments and we hear that statistic, it requires a tax preparer in 57 percent of the cases—or at least it is preferred or required—you have to ask yourself, "Well, what could go wrong with that?" And, of course, the error rate is going to be high——

Mr. KOSKINEN. Right.

Mr. CONNOLLY. —even inadvertent.

Mr. KOSKINEN. Correct.

Mr. CONNOLLY. And I just wanted to stress that because this is a conservative idea that I think actually is—does work, but it is full of complexity that leads to an unintended consequence, which is improper payment.

Mr. KOSKINEN. As I said, when I started, I looked at the history and advised people that it is an unacceptable rate of payment—improper payments, an unacceptable rate of dollars out the door, and we need to do whatever we can to make a dent in it.

Mr. CONNOLLY. Thank you.

And I thank you, Mr. Chairman.

And I thank my colleagues for their indulgence.

Mr. MICA. Thank you, Mr. Connolly.

Mr. Koskinen, I can assure you that the late President Reagan will be doing back flips in his California tomb if he—if and when he learns today of a 25 percent—well, nearly 25 percent error rate in an IRS program which he championed, the Earned Income Tax Credit.

With that, the gentleman from California, the——

Mr. ISSA. Thank you, Mr. Chairman.

Mr. MICA. —Chairman of the full committee.

Mr. Issa, I want you to check the tomb when you go out there.

Mr. ISSA. Okay.

Mr. Commissioner——

Mr. CONNOLLY. I want to second that motion, Mr. Chairman.

Mr. MICA. That was a—I don't know if you heard that. Were you here, also?

Mr. ISSA. I think you better read that one again. Once we——

Mr. MICA. Reagan is doing back flips in his tomb to find out that the program that he championed, Earned Income Tax Credit, had a 25 percent error rate.

And you weren't here either to——

Mr. ISSA. Nixon isn't that keen about what has happened with the EPA and OSHA either. So it happens.

Mr. MICA. The Commissioner informed the committee today that taxpayers will be happy to know they keep your records for as much as 50 years. They do have a little problem with 27 months on the——

Mr. ISSA. That part I heard. And——

Mr. CONNOLLY. Although it is important to note Nixon had a lot more experience with the IRS than did President Reagan.

Mr. MICA. Well, he's probably doing some back flips, too, out there in his tomb.

Mr. ISSA. I would now ask unanimous consent my time be restored.

Mr. MICA. All right.

Mr. ISSA. Mr. Commissioner——

Mr. MICA. I yield to the chairman.

Mr. ISSA. Oh, we are having too much fun for the subject being so serious.

I think I covered what I wanted to cover in the opening statement.

And I want to touch a few areas, Commissioner, since you are here and it is an appropriate time.

The—we have had two large dumps from the IRS in the targeting of conservatives that have occurred in the last few days, one on the 3rd of July—I was in the air coming; so, I didn't read them that day—and then more yesterday.

Additionally, we have had a response from your office to my 15 or so questions with lots of subparts, and I want to just run through a couple of quick questions.

Your letter, although was partially responsive, didn't respond to most of the specifics, including names of individuals and so on.

Are you going to be responding further to my interrogatory questions we gave you at the last hearing?

Mr. KOSKINEN. Yes. We will—we will respond to those as quickly as we can. As I said in my letter to you, the Congress has asked the IG to do an investigation of all of this.

He's asked us to give that a priority. So we are providing as much information to you as we can without interfering with that investigation.

Mr. ISSA. Right.

Mr. KOSKINEN. But as he winds that up, which I hope will be soon, we plan to respond to all of those interrogatories.

Mr. ISSA. Well, oddly enough, both of us have been working for 2 years. So concurrent working is part of it.

And that brings to a specific the producing of the backup tapes and so on that, apparently, are at TIGTA. Backup tapes—and we have experts in the audience from MIT and Ohio State that will tell us that backup tapes can be duplicated.

We would ask that you go to TIGTA and essentially make backup tapes and deliver them to us so that we can concurrently work on them.

Things which are unique and can't be moved, we would understand why they can only be in one place, but the others certainly we would expect.

You know, for example, the BlackBerry could be difficult, but you can make a backup of a BlackBerry's contents and it can be restored to a new BlackBerry.

So if you would look into that, I would appreciate it.

The—I am going to be brief. You know, it is 2 years into an investigation. You are the third commissioner since this thing got rolling, maybe fourth to a certain extent.

And we find it interesting that, on the 3rd of July, in the documents that were provided to us, we only learned of something—and Mr. Jordan's going to primarily ask some specific questions of you—but of the existence of a system called OCS.

Are you familiar with that?

Mr. KOSKINEN. OTS, I may be, but I don't recognize the initials.

Mr. ISSA. "OCS."

OCS is your internal communication. It is an IRS chat. Maybe some of the people behind you could raise their hands and say they know about how, in fact, you have a system that circumvents email and allows you to talk to each other, sort of like an in-house text.

Are you familiar with it?

Mr. KOSKINEN. No. I have never used it. I didn't know we had that.

Mr. ISSA. Well, I am going to let Mr. Jordan go through the series of question. I really think it should—deliver a time.

I am going to ask that the staff deliver the emails to you during the intervening questions because I don't want you to be blindsided, but I want it to be very clear.

Lois Lerner knew about that system. Lois Lerner asked and wanted to make sure that it wasn't being tracked and traced.

And, most importantly, you have had—your Agency has had a subpoena that would have covered the delivery—the preservation and delivery of information on this alternate email system and, to our knowledge, we have received no discovery from it.

So it is a serious concern. I am going to ask, for efficiency, that they give you the documents. And then Mr. Jordan, after you have had a chance to look at them, will—and maybe let the people that are here with you be aware of them.

Because it is critical to us that we are only finding out on the 3rd of July, 2 years into an investigation, that, in fact, there is an entire other way to communicate, that Lois Lerner very carefully wanted to make sure, just after—just about the time that this whole thing erupted, she wanted to make sure that it wasn't tracking and that it was a way to talk between her colleagues.

Mr. KOSKINEN. As I say, I am not familiar with OCS. All I can say is I have been assured numerous times that there has been a search through every system in the IRS to make sure we provided you all the Lois Lerner emails we can find.

Mr. ISSA. It is not email. You have another communication system, and it is one that is—the tracking is turned off even though the default for the tracking is turned on.

It is a Microsoft system that you have within—within your communication, and we are obviously opening a new track of wanting to know more details about that.

Mr. KOSKINEN. We would be delighted to provide that.

Mr. ISSA. Okay. I will close quickly. Because, like I say, I want you to have full understanding. I want Mr. Jordan to actually cover the point by point.

Since we last were together, Lois Lerner's attorney has changed his position on Lois Lerner's compliance and basically said that she printed out some, but not all, and that he was misunderstood in the case—in the case of printing out emails related to the Presidential Records Act.

And, again, this investigation is not about the President—or the—I am sorry—about the Federal Records Act. It is about targeting of conservatives.

To your knowledge, have you delivered the printed-out copies of Lois Lerner's emails? And, if so, how do we tell the difference between the ones she printed out that you took from a file and ones you recovered from somewhere else?

Mr. KOSKINEN. To the first question, I have asked that question myself some time ago as to whether there were hard copies.

And I was told there were hard copies and they were all produced to you in the ordinary course of our production. I can't tell

you whether all of her official records were printed out and are included in that or not.

Your second question? I am sorry.

Mr. ISSA. Well, the second question is, in fact, a favor.

In order for us to not look through what seemed to be identical documents and we can't tell which ones were printed out in hard copy and you took them and scanned them in to give us tips and which ones were, in fact, documents that you got from somewhere else, can you have your people give us either the Bates numbers or a duplicate copy of the files that were delivered that were specifically printed out by Lois Lerner in compliance with the Federal Records Act so that we can separate ones gotten from one source, which would have been Lois Lerner's compliance, and the others? Because we have no way of knowing where you got which papers from.

Mr. KOSKINEN. That is fine. I don't either, but we would be happy to go back and determine that and send you up-to-date details so you will know which we were found—which were found as hard copies and which were found as emails.

Mr. ISSA. That would be very appreciated.

I thank the chairman, and I yield back.

Mr. MICA. Mr. Clay.

Mr. CLAY. Mr. Chairman, thank you.

Commissioner Koskinen, thank you for being here today.

Again, you just testified before this committee on June 23rd about Lois Lerner's computer crash. After that hearing, Chairman Issa sent you a letter basically suggesting that you made false statements about whether Lois Lerner printed out her emails to comply with the Federal Records Act.

He wrote:"Ms. Lerner and the IRS are not being truthful about her lost emails, in violation of federal law. Although accusations of lying to Congress are common around here, they are very serious." And so I want to give you a chance to respond.

At a previous hearing, you testified: "My understanding is every employee is supposed to print records that are official records on hard copy and keep them."

And, in fact, the Internal Revenue manual, which sets forth the policies governing the Internal Revenue Service has a section entitled "Emails as Possible Federal Records."

That section states: "If you create or receive email messages during the course of your daily work, you are responsible for ensuring that you manage them properly. The department's current email policy requires emails and attachments that meet the definition of a federal record be added to the organization's files by printing them."

So according to the manual, IRS employees were required to print out emails that qualified as federal records. Is that right?

Mr. KOSKINEN. That is correct. As I—go ahead.

Mr. CLAY. Okay. In your testimony at our last hearing, you also said that Ms. Lerner: "printed hard-copy emails."

Has the IRS provided those printed hard-copy emails to Congress?

Mr. KOSKINEN. Yes, we have.

Mr. CLAY. Oh. You have provided those. I am curious as to why we are still inquiring about them.

Today, Ms. Lerner's attorney issued a statement informing the committee that, during her tenure at the IRS, Ms. Lerner did print some emails.

His statement continues, "The facts are that Ms. Lerner did not destroy any records subject to the Federal Records Act. She did not cause the computer assigned to her to fail, and she made every effort to recover the files on the computer."

And, Mr. Chairman, I ask that this statement be placed in the hearing record.

Mr. MICA. Without objection, so ordered.

Mr. CLAY. Thank you, Mr. Chairman.

Mr. MICA. Let me just do a quick housekeeping.

Mr. CLAY. Sure.

Mr. MICA. I am sorry, Mr. Clay, because I failed to do this at the beginning.

I ask unanimous consent that Mr. Clay, the gentleman from Missouri; Mr. Jordan, the gentleman from Ohio; Mr. DeSantis, the gentleman from Florida, who are not on the subcommittee, be—without objection, be allowed to participate fully in the subcommittee proceedings. Without objection, so ordered.

I didn't do that, and I apologize. And we have been joined by other members of the full committee and we want to give them full access.

Thank you.

Mr. CLAY. Thank you so much.

Commissioner, at our last hearing, when you discussed Ms. Lerner's computer crashing, you said this: "I don't know whether anything that was lost was an official record or not." Is that correct?

Mr. KOSKINEN. That is correct.

Mr. CLAY. But in Chairman Issa's letter to you, he claimed that you testified to something different. He wrote that you testified that Ms. Lerner fully maintained her official records pursuant to the Federal Records Act. And I cannot seem to find that statement.

Was that your testimony.

Mr. KOSKINEN. No. As I said in my letter to the chairman in responding yesterday, I appreciated the opportunity to review the record.

There is nothing in my statement that I would change. But if I can provide any clarification, I am happy to do that, but I have not suggested any changes in my testimony in the record.

Mr. CLAY. Thank you for that response.

And before I conclude, I want to emphasize an important fact. Lois Lerner's hard drive crashed on June the 13th, 2011.

16 days later, on June the 29th, was the first time she was first informed that the IRS employees in Cincinnati were using inappropriate search terms. And that is according to Inspector General Russell George.

Is that correct, Mr. Commissioner?

Mr. KOSKINEN. That is my understanding.

Mr. CLAY. And, with that, Mr. Chairman, I yield back. And I thank you for your indulgence.

Mr. CONNOLLY. Mr. Chairman. Mr. Chairman.

Mr. MICA. Yes.

Mr. CONNOLLY. Just a unanimous consent request.

I propose this line of questioning. I would ask unanimous consent that John Koskinen's letter addressed to Chairman Issa dated July 8th be entered into the record.

Mr. MICA. Without objection, so ordered.

Mr. CONNOLLY. I also would request that the statement by William W. Taylor issued today, clarifying Ms. Lerner's printing out of emails, brief statement, be entered into the record.

Mr. MICA. Without objection, so ordered.

Mr. CONNOLLY. I thank the Chairman.

Mr. MICA. Thank you.

Let me recognize Mr. Meadows, the gentleman from North Carolina.

Mr. MEADOWS. Thank you, Mr. Chairman.

Ms. Cobert, I am going to come to you first because you were saying that we have made great progress. I think you were saying you had a lower percentage in this administration. You have been able to cut this—improper payments way down. Is that correct?

Ms. COBERT. We have. Yes.

Mr. MEADOWS. You went from 5.42 percent down to 3.53. Is that your testimony?

Ms. COBERT. That is correct.

Mr. MEADOWS. All right. I am a little troubled because it gives—if we talk percentages, it sounds a whole lot better than reality.

And so I guess my question is: In terms of real dollars, I am showing that we have really made no significant change, that, in 2009, your percentage was—it was $106 billion in improper payments. Would you agree with that?

Ms. COBERT. I believe that is correct.

Mr. MEADOWS. Okay. So the only reason the percentage came down is because we are spending more. So 106, as it relates to a higher number that we are spending, but we are still sending out $106 billion in terms of improper payments. Is that correct?

Ms. COBERT. The figure last year was $106 billion in improper payments. $97 billion of that was the overpayment portion. Yes.

Mr. MEADOWS. Okay. And so—and that is exactly the number that it was in 2009, is that correct, in terms of total number?

Ms. COBERT. I believe that is correct.

Mr. MEADOWS. All right. So your testimony to say that we are making good progress and all of us should be excited doesn't really do anything to go to what Mr. Connolly said about $106 billion being real money?

Ms. COBERT. We believe $106—we take the responsibility to reduce both the percentage and the absolute dollars of improper payments very seriously.

Mr. MEADOWS. Okay.

Ms. COBERT. We believe that we need to continue to work on this issue. We are doing that accurately. We want to be——

Mr. MEADOWS. But to say we are making progress when we still are wasting $106 billion, don't you think that that is an inaccurate narrative?

Ms. COBERT. We have made progress in reducing the percentage. We think that is important. And we think we need to continue to focus on both of these issues.

Mr. MEADOWS. All right. So I am a numbers guy. So let's go back to 2008.

What was the total in improper payments then?

Ms. COBERT. I don't have the exact figure in front of me.

Mr. MEADOWS. Well, I do. And that is why I asked the question. It is $73 billion. And so we—we had an increase of some $26-, $27 billion.

In a very short period of time between 2008 and 2009, what—what caused that, in terms of improper payments?

Ms. COBERT. So as you look at the improper payments, one of the ways we look at it is look at it program by program.

Some programs, as we have discussed, have higher rates than others. Unemployment insurance, for example, has a higher rate than DOD commercial payments.

So some of that is due to the change in mix. That still means we have to keep looking at each one of those program elements and say, "What can we do to bring the level down and the percentage down?"

Mr. MEADOWS. All right. So, in terms of level, in terms of real numbers, most of these across—if you look at all the payments, most of them haven't really gone down other than unemployment insurance.

It had a decrease—a significant decrease of improper payments of about $6 billion. Some have suggested it is just because we have made it more inclusive in terms of being able to get those benefits.

But how—how can we celebrate this in terms of improper payments when we are really not making any progress in terms of payments going to different people?

Ms. COBERT. What we are trying to do when we go through each of these programs is to continue to say, as you said, how can we take specific actions to reduce improper payments from all different sources, to understand what is driving those, and to look at the underlying root causes in conjunction with the GAO, in conjunction with the IG. As——

Mr. MEADOWS. So do we give out bonuses based on people making progress on this?

Ms. COBERT. We do hold senior account-—senior officials in agencies—there is a senior accountable official for each program identified as the person responsible for making progress on improper payments.

Mr. MEADOWS. So those officials in those agencies where we didn't make progress shouldn't have gotten bonuses. Would you agree with that?

Ms. COBERT. I believe that people need to be held accountable for program performance.

Mr. MEADOWS. That is not the question I asked.

So should they have gotten a bonus if they didn't perform, if this was one of the matrix of performance?

Ms. COBERT. The performance—their bonuses are based on the specifics of their performance plan.

Mr. MEADOWS. Right.

And so, if they went the wrong way, do you think they should have gotten bonuses? Your opinion. Nobody else's. Just your opinion. Should they have gotten a bonus?

Ms. COBERT. I think they all are accountable.

Mr. MEADOWS. "Yes" or "no."

Ms. COBERT. That is why they are there.

Mr. MEADOWS. Just a "yes" or "no."

Ms. COBERT. You know, there is a——

Mr. MEADOWS. Well, obviously, you think they should. All right. So let me—let me go on a little bit further.

Mr. Koskinen, what is your target this year for EITC in terms of where you believe that we should be percentage-wise? What is your target?

Mr. KOSKINEN. The target—pardon me.

Our target this year is to make an improvement. If you look at——

Mr. MEADOWS. What is your number target?

Mr. KOSKINEN. Right now, on the basis of what we are doing, unless we can change the way we are doing it—my concern is, for the last 6 to 8 years, it has been at an unacceptable level.

And one of the reasons we are asking for legislative support to change the way we deal with it is that, if—as I told our executives, if we keep doing the same thing the same way, we should expect the same——

Mr. MEADOWS. So you don't have a number?

Mr. KOSKINEN. So I do not have a better number.

Mr. MEADOWS. All right. So let me ask you this question.

If the Chair will indulge me, and I will close with this.

You have a law on the books passed in 2002, amended in 2010, that says that you are required to have a target and you are required to publish it.

And the Inspector General's report says that you haven't done it for the last 3 years and, obviously, still today you are not doing it.

So if you are not willing to follow the law in terms of what is already passed, how will a new law help you accomplish that?

Mr. KOSKINEN. Well, as I said earlier to your target, I expect, if we don't have additional resources in terms of the legislative support, that our target will be—we are going to be right where we are and where we have been.

Mr. MEADOWS. But that is not what the law says.

Mr. KOSKINEN. Well, like I said, let's have a target. I will say that our target then has to assume——

Mr. MEADOWS. So when can we expect you to publish it? Because that is what the law says. So is there any justification for not following the law, Mr. Koskinen?

Mr. KOSKINEN. None at all. We will publish our target. You are exactly right. There is no reason not to—not to do that.

Mr. MEADOWS. All right. I will yield back.

Mr. CONNOLLY. Would my friend yield?

Mr. MEADOWS. I am out of time, but I would be glad to yield if the chairman will——

Mr. CONNOLLY. If we could operate under the Darrell Issa rules, you get a lot of time. Could you yield?

Mr. MEADOWS. I would be glad to yield to the——

Mr. CONNOLLY. I meant that in a loving way.

I just—I wonder if my friend would ask the same question of Ms. Davis from GAO that he put to Ms. Cobert because I think he was making a very good point.

We have reason to believe we are understating the actual amount of improper payments. I just wonder if we could just give GAO an opportunity, if my friend would ask that question, since it is his time allotment.

Mr. MEADOWS. Consider it asked, Ms. Davis.

Ms. DAVIS. Thank you.

As I also mentioned in my testimony, the GAO, when it looked at the consolidated financial statements of the United States Government, identified improper payments as material weakness in internal controls due to the fact that we at this point in time cannot estimate the full extent of improper payments first and then assure that there are actions—reasonable actions that are being taken to reduce them.

I will make a point that, while the goal is, of course, to reduce improper payments and we did put forward some strategies to do that, there are instances, of course, where an addition to the improper payment figure is a good thing.

To be specific, this past year a net of 10 programs were added to the improper payment government-wide estimate. It was actually, I believe, about 12 programs that were added, and then 6 came off, and there were 4 that were split.

But, in total, there was a net increase of improper—a net increase of 10 programs that were added to the estimate of improper payment.

So to the extent—the first point, as I made earlier about having—knowing the extent of improper payments, that is a positive thing.

Mr. MICA. Thank you.

Gentleman from Kentucky, Mr. Massie.

Mr. MASSIE. Thank you, Mr. Chairman.

Mr. Koskinen, I have a—I think, a simple question about the tape backups at the IRS.

I think you testified earlier that the tape backups are recycled every 6 months——

Mr. KOSKINEN. They are——

Mr. MASSIE. —at the time.

Mr. KOSKINEN. They are kept for 6 months and then the tapes are put back into being recycled.

Mr. MASSIE. So the tapes are reused?

Mr. KOSKINEN. They are reused. Yes. They are reused until they don't work.

Mr. MASSIE. So how long of a period is that? How many times can you reuse the tapes? And how long do they last?

Mr. KOSKINEN. I don't know.

Mr. MASSIE. Does the IRS still recycle tapes, overwrite them every 6 months, as a policy?

Mr. KOSKINEN. No. Ever since the start of the investigation and the release of the IG's report, all backup tapes have been saved. So we have the 6 months up to May of 2013 and everything since then.

Mr. MASSIE. Here's what confuses me, because I had a chance to talk to an expert in tape backups.

These tapes hydrolyze after about 6 years. In fact, they are not guaranteed. And the manufacturer doesn't advise you to recycle them.

In fact, their admirable qualities are their storage density, transportability, and low cost, but not the length of time that you can keep data on them.

So this expert was surprised that you are at the IRS recycling what is something that is so cheap that it is actually cheaper to use new material instead of recycling.

Can you confirm that these tapes were recycled and not destroyed?

Mr. KOSKINEN. I can't tell you that off the top of my head, but I would be happy to be checked.

I have been told sometime ago when I first started being involved with this that the tapes were used and recycled and they are recycled until they are no longer useable and then they are disposed of.

But with regard——

Mr. MASSIE. But when they are no longer useable, they fail, and the purpose is to prevent failures. That is what confuses me.

Mr. KOSKINEN. I will be happy to get you information about that.

Mr. MASSIE. So it is your understanding that these tapes were recycled for reasons of economy.

Mr. KOSKINEN. That is my understanding.

Mr. MASSIE. Not to cover—to make sure that there were never more than 6 months of data.

Mr. KOSKINEN. I never had any indication of that.

Mr. MASSIE. All right. Thank you very much.

I am going to yield the balance of my time to the gentleman from Ohio.

Mr. JORDAN. I thank the gentleman.

Commissioner Koskinen, 3 weeks ago in front of the Ways and Means Committee you testified—we have actually got it on the screen here—"Lois Lerner was not trying to destroy email. In fact, she was working very hard to restore her emails."

Do you stand by that statement?

Mr. KOSKINEN. As far as I know, yes.

Mr. JORDAN. Okay. Then, I want to—I want to show you a few emails that you have had a chance to review now. We got these on July 3rd, 4 o'clock. And I want to show you three emails out of 15,000 that you dumped on us on July 3rd.

Let's go first to this one. This is to—Lois Lerner to Maria Hooke. "I had a question today about OCS"—what the chairman was asking you about earlier—"I was cautioning folks about email and how we have had several occasions where Congress has asked for emails and there has been an electronic search for responsive emails. So we need to be cautious about what we say in emails because Congress might get ahold of them and the American people might actually find out what the IRS is doing."

But then she quotes, "Someone asked if OCS conversations were also searchable."

Now, your response to the chairman was you don't know anything about OCS. Is that—that true? You have no idea what this system is?

Mr. KOSKINEN. Correct.

Mr. JORDAN. It is our understanding, after our staff did some background work, that this is an intra-office instant messaging chat-type system that you have in place at the Internal Revenue Service.

And this was followed up by a response from Ms. Hope—or Hooke—excuse me. So, remember, Ms. Lerner says, "I had a question about OCS."

And then Ms. Hooke responds—Ms. Hooke responds back, "OCS messages are not set to automatically save as the standard."

You follow me, Mr. Koskinen?

Mr. KOSKINEN. Right along with you.

Mr. JORDAN. I appreciate it.

And then, of course, the response from Ms. Lerner is, "Perfect." So now I want to show you one more timeline. I have one more slide, and it is actually the timeline from the Inspector General.

March 28, 2013, discussion draft report was issued to the IRS. And so here is what I see. Now, maybe—maybe you see something different, but this is what I see, and my guess is the American people see this.

At our last hearing, we learned that, on June 3rd, 2011, Chairman Camp sent a letter to the Internal Revenue Service saying, "Hey, we are concerned about what we think may be targeting of conservative groups."

10 days later, June 13th, 2011, a bunch of computers mysteriously crash, including Lois Lerner's computer.

Now we jump forward. March 28th, 2013, the Inspector General gives the Internal Revenue Service the discussion draft report, his audit.

And you all learn—well, you weren't there at the time, but the IRS learns, and specifically Ms. Lerner learns, that you have been caught with your hands in the cookie jar and that, in fact, targeting was going on and now the Inspector General knows it.

And so 12 days later we get this email exchange that we just went through where Ms. Lerner says, "Wow, I know I have gotten rid of the emails"—when the computer crashed 2 years earlier—"but I better double-check on this intra-office instant messaging capability we have here at the Internal Revenue Service." And she says, "Perfect" when she learns that it is not traceable, not trackable, not stored.

And so my question to you—I mean, we know Ms. Lerner is not being square with the American people. Remember, it was just 31 days after this email exchange right here.

31 days later she went to a Bar Association speech here in town and told the whole world Washington had nothing to with it.

Even though she's trying to make sure her tracks are covered, she told the whole world Washington didn't have anything to do with it, it is a couple rogue agents, a couple of line agents in Cincinnati. So we know she can't be trusted.

But what I want to know is: Why did it take us this long to get these emails? We have been after these for 6 months and you dump them on us on July 3rd.

Mr. KOSKINEN. First of all——

Mr. JORDAN. Have you ever seen this—have you ever seen this stuff before?

Mr. KOSKINEN. No. And I don't see anything in here where Lois Lerner says, "Wow, I got rid of my earlier emails and now I have got to check on them."

Mr. JORDAN. I am not saying that. I am focusing on the pattern.

Mr. KOSKINEN. I am sorry——

Mr. JORDAN. I am focusing on the pattern.

Mr. KOSKINEN. I am sorry. You said, for the record, that Lois Lerner had written——

Mr. JORDAN. No, I didn't.

I said Dave Camp sent her a letter. 10 days later her computer mysteriously crashes and seven other important people at the IRS. And then I am saying here's the pattern again.

She learns that there is—oh, the Inspector General is going to issue a report that says the IRS was, in fact, targeting conservative groups and now, 12 days after that, she says, "We better make sure this OCS system doesn't track anything, is not traceable, and Congress and, more importantly, the American people can't get access to what we were talking about."

Mr. KOSKINEN. I understand you might——

Mr. MICA. Let me just interrupt a second.

Mr. Massie's time has expired. I am recognizing Mr. Jordan——

Mr. JORDAN. Thank you, Mr. Chairman.

Mr. MICA. —for his 5 minutes at this point.

Mr. JORDAN. Thank you, Mr. Chairman.

Mr. KOSKINEN. I don't see anything in here about Congress—using the OCS system or not helping Congress. It says, "The recommendation is to treat the conversation as if it is been saved somewhere because it is possible"——

Mr. JORDAN. Okay. Okay.

Mr. KOSKINEN. —"that somebody else did it."

Mr. JORDAN. All right. Fair enough.

Let's look at the first sentence in each email.

Lois Lerner says to Ms. Hooke, "I had a question today about OCS."

First sentence Ms. Hooke says, "OCS messages are not set to automatically save as the standard."

Lois Lerner's response, "Perfect."

That is what I see.

Mr. KOSKINEN. Well——

Mr. JORDAN. Now, here's the point.

Mr. CONNOLLY. Would my friend yield?

Mr. JORDAN. When I am—I will be happy to yield here in a second.

Mr. CONNOLLY. I thank you.

Mr. JORDAN. Have you made these emails—have you given these emails to the FBI?

Mr. KOSKINEN. We provide all of the emails we provide to all the investigators. So I am assuming this went to all six investigators.

Mr. JORDAN. Well, now, just a couple of weeks ago, when I asked you did you tell the FBI that you—when you knew that you had lost Lois Lerner's emails, you said you did not.

But now you are saying you have sent this—this information to the FBI?

Mr. KOSKINEN. We send all of the—for the tax-writing committees—and the FBI has 6103 for that—we have sent 960,000 documents, and we have sent those to everybody doing an investigation, including the Justice Department.

Mr. JORDAN. Have you or anyone at the IRS sat down with the FBI and talked to them about the lost emails of Lois Lerner and/or this email chain that we just discussed?

Mr. KOSKINEN. I have no understand—not to my understanding.

Mr. JORDAN. You have not. You personally have not.

Mr. KOSKINEN. I have personally not.

Mr. JORDAN. The FBI has not talked to you about the lost emails of Lois Lerner?

Mr. KOSKINEN. They have not.

Mr. JORDAN. Has anyone at the Justice Department talked with you or anyone at the Internal Revenue Service about Lois Lerner's lost emails?

Mr. KOSKINEN. I don't know.

Mr. JORDAN. So the FBI has not talked to you. And you don't know if they talked to anyone in your Agency about——

Mr. KOSKINEN. I have no idea whether the Justice Department has talked to anybody at the Agency. They have not talked to me.

Mr. JORDAN. The Justice Department—so, for the record, the FBI and Justice Department have not talked to you about the lost Lois Lerner emails?

Mr. KOSKINEN. That is correct.

Mr. JORDAN. And they have not talked to you about this email exchange right here?

Mr. KOSKINEN. That is correct.

Mr. JORDAN. Okay.

Mr. CONNOLLY. Would my friend yield?

Mr. JORDAN. In just a second.

Let me go to one other thing—one other thing we noticed on this email exchange between Ms. Lerner and Ms. Hooke.

It is—it is copied to Nanette Downing. Do you know who Nanette Downing is?

Mr. KOSKINEN. I do not.

Mr. JORDAN. Do not? Well, we do. She's the head of the exams division at the Internal Revenue Service.

Any idea why the person who's head of the exams division is getting copied on email that says, "We want to make sure that intra-office communications aren't tracked?"

I mean, particularly in light of the fact we also just learned in the past few weeks that Ms. Lerner was hoping Mr. Grassley, Senator Grassley, was going to be referred for an exam, any idea why Nanette Downing is listed on this email exchange, Commissioner?

Mr. KOSKINEN. I have no idea why.

Mr. JORDAN. No idea?

Mr. KOSKINEN. None.

Mr. JORDAN. Okay. Has the FBI talked to Nanette Downing? Do you know that?

Mr. KOSKINEN. I do not know.

Mr. JORDAN. All right.

Mr. CONNOLLY. Would my friend yield?

Mr. JORDAN. I would be happy to yield.

Mr. CONNOLLY. I thank my friend.

I just want to point out, keeping that graphic up on the screen, we have got to be real careful about not taking this out of context.

Lois Lerner's answer, "Perfect" is not to this lower box in red. It is to the last paragraph that says, "My general recommendation"—this is from Maria Hooke—"is to treat the conversation as if it could be"—or "is being saved somewhere, as it is possible for either party of the conversation to review the information."

Mr. JORDAN. You—after she said, "I have already cautioned people about what they say in emails" after her computer's crashed, after—after she's nervous about the OCS system and "what we are going to say because it might be traceable and trackable," you expect us and, more importantly, the American people to believe that, "Oh, yeah. Perfect. Now we know we need to save these."

That is the most ridiculous interpretation. There is no one with any common sense who would reach that interpretation that my colleague reached. No one would reach that—but if you want to stick to it, God bless you.

Mr. CONNOLLY. Well, I would just say to my friend——

Mr. JORDAN. Notice the first line—this is what I said to the Commissioner.

Mr. CONNOLLY. I would just say to my——

Mr. JORDAN. I had a question today about OCS. Suddenly here is—here's how it plays out.

Mr. CONNOLLY. I would——

Mr. JORDAN. It is my time. It is my time, Mr. Chairman.

So suddenly Lois Lerner learns——

Mr. CONNOLLY. Mr. Chairman, as a matter of personal privilege——

Mr. JORDAN. No. No. Wait.

Mr. CONNOLLY. —I would caution our colleague——

Mr. JORDAN. I will yield back. I will yield back.

Mr. CONNOLLY. —that he not characterize another member as ridiculous. What is——

Mr. JORDAN. I didn't characterize you as ridiculous. I said it is a ridiculous interpretation.

So notice the first sentence, "I had a question about OCS." Here is what happened. March 28th, the IRS gets a heads-up the Inspector General caught them. Because we asked the Inspector General to do the audit, he caught them targeting conservative groups.

And now Lois Lerner says, "You know what? I better double-check and make sure this intra-office instant messaging"—that that can't be traced, that can't be tracked.

And all I want to know is why the Commissioner took 6 months to get us this information.

We have been asking for this stuff forever and it is—Mr. Commissioner, is there anything—here's a good question.

This one email where Lois Lerner says, "Perfect," is there any 6103 violation in that email? Why in the heck did it take us 6 months to get this email chain?

There is not one chance there is any 6103 information contained in these three emails, and, yet, that is what you hide behind, "Oh, we have got to check it off for 6103."

There is no way. We could have had this 6 months ago, when we first issued the subpoena when you took over. And we don't. And we are supposed to believe——

Mr. KOSKINEN. We are working——

Mr. JORDAN. We are supposed to believe she's saying, "Oh, perfect. We have"——

Mr. KOSKINEN. We are working our way through and have completed the production for tax-writing committee——

Mr. JORDAN. Yeah. So you give us——

Mr. KOSKINEN. Sixty-three times——

Mr. JORDAN. July 3rd, 4 o'clock, the day before a holiday, is when you give us 15,000. We see them.

Mr. KOSKINEN. Right. And you're going to get more, because the——

Mr. JORDAN. Well, let's hope we——

Mr. KOSKINEN. This committee has got 40,000. You've got 23,000 more to go—27,000 more to go. And I'm sure in those 27,000 there will be some other interesting email you'll have to read, and it won't be because we didn't give it to you in February. We're giving them to you as fast as we can.

And it's a significant volume of evidence. As I say, it's almost a million pages of documents that have gone to the tax-writing committee.

Mr. JORDAN. All I'm saying is there's no 6103 problem with these three, and we should've had them a long time ago. But because, whoa—Lois Lerner is talking about, "Be careful what you say in emails. Make sure this OCS system is not traceable."

Mr. KOSKINEN. Remember——

Mr. JORDAN. Six months, we get them on July 3rd at 4:00 p.m. With 15,000 other documents.

Mr. KOSKINEN. If I could note for the record, our first request by the investigators was to go through the custodians with search terms that had to do with the determination process, not with the email process. Therefore, when we went through, we pulled them by subject matter, and the first email——

Mr. JORDAN. That is simply not true. We asked clear back last summer for everything. I asked Mr. Werfel in a committee hearing just like this, "I want every single piece of correspondence Lois Lerner sent to anybody. We want all of them." So this has been over a year that we've been asking for this.

Mr. KOSKINEN. Right. And the prioritization was we would produce to you all the emails that had a subject matter having anything to do with the determination issue, which was the IG report.

Mr. JORDAN. Mr. Chairman?

Mr. KOSKINEN. Those are the first emails we produced. Then we went back and searched to find all the other Lois Lerner emails, and they're coming forward. And you're going to get more. The tax writers have all 67,000. You'll get another 24,000 or 27,000. And

I'm sure some of those will be interesting to people, but it's not because we delayed them, it's because that's the process we've had to produce them.

Mr. MICA. I thank the gentleman.

And I think we have another Member waiting, Mr. DeSantis, the gentleman from Florida.

Mr. DESANTIS. Thank you, Mr. Chairman.

I'll yield some time to the gentleman from Ohio.

Mr. JORDAN. I thank you.

Here's the takeaway: Nine days after the IRS knows they're in trouble, Lois Lerner is trying to cover her tracks. That's why we've got the mail exchange here. She already knows her emails are gone because the computer crashed back in 2011, 10 days after Dave Camp asked about it. So 9 days after the IRS knows they're in trouble, she's trying to cover her tracks.

Thirty-one days after this email happens, she goes to a Bar Association speech and blames some good public servants in Cincinnati, says that's where the problem is, lies to the American people. And we don't get that information after we've been asking for it for a year.

And this guy tells us he hasn't even talked to the FBI. What kind of investigation is going on when the FBI won't even talk to the head of the agency that has this kind of stuff going on with their email exchange and won't talk to the agency that lost key evidence in an investigation that's about people's First Amendment rights being targeted?

And we get these flippant answers from the Commissioner.

Mr. KOSKINEN. I——

Mr. JORDAN. That's what just bothers——

Mr. KOSKINEN. I wouldn't——

Mr. JORDAN. —that's what bothers every single American, Mr. Chairman.

Mr. KOSKINEN. I wouldn't say there——

Mr. JORDAN. With that, I would yield to my——

Mr. KOSKINEN. I wouldn't say there——

Mr. JORDAN. —I'd yield to my colleague.

Mr. DESANTIS. Well, I thank the gentleman from Ohio.

And——

Mr. CONNOLLY. Mr. Chairman, I must say——

Mr. DESANTIS. —these emails——

Mr. CONNOLLY. —I object to this badgering of a witness. At least the witness is entitled to respond after having his comments characterized.

And this is not the standard of the subcommittee you and I've set, Mr. Chairman.

Mr. MICA. Well——

Mr. CONNOLLY. Characterizing Members of Congress and abusing and badgering witnesses, that is not the standard this subcommittee has set.

Mr. JORDAN. Mr. Chairman, I did not mischaracterize——

Mr. MICA. Okay.

Mr. JORDAN. —my colleague.

Mr. MICA. Okay.

Mr. JORDAN. I characterized his interpretation as one that I don't think very many Americans are going to reach. I did not disparage my colleague. I have a great deal of respect for my colleague.

Mr. MICA. I would rule that, again, I don't think he disparaged the witness, but I think he spoke to, again——

Mr. KOSKINEN. I would just——

Mr. MICA. —a situation.

And we do want all the Members to be respectful of the witnesses. He is not under a subpoena, and he came here voluntarily. And, again, there are differences of opinion as to what occurred, and our job is to get to the facts.

Mr. KOSKINEN. Right. And——

Mr. CONNOLLY. I thank the chairman.

Mr. KOSKINEN. —I appreciate that, but I would just——

Mr. MICA. Did you want to respond, Mr. Koskinen?

Mr. KOSKINEN. Yes, I would appreciate that. Thank you very much.

My only response was to disagree with the characterization that my responses have been flippant. I've tried to be responsive in any way that I can, both in my previous hearings and now. I understand these are important matters, and any information we can provide we will. But——

Mr. JORDAN. How is it responsive when you wait 2 months to tell the United States Congress that you lost Lois Lerner's emails? How is that responsive? That's what the American people want to know, Mr. Commissioner.

Mr. KOSKINEN. Yes. And——

Mr. JORDAN. And you did not tell the FBI you lost Lois Lerner's emails. How is that responsive? Tell me that.

Mr. KOSKINEN. Well, I can——

Mr. JORDAN. You waited till you knew in April, and you didn't tell us.

Mr. KOSKINEN. As I have testified to in two previous long hearings, when we knew in April that there had been——

Mr. JORDAN. You knew in April, and you told us in June.

Mr. KOSKINEN. And told you in June, and the reason was because——

Mr. JORDAN. Why'd you wait 2 months?

Mr. KOSKINEN. Can I answer this question?

Mr. MICA. Yes, you can. And go ahead.

Mr. KOSKINEN. Can I—thank you.

As I testified in two previous hearings, when I learned about the situation in April and we began to collect the information on how many other emails could we reproduce, my judgment was at the time that we should produce and discover exactly what the full context of the situation was and report it.

Mr. DESANTIS. Were you advised of that, Mr. Commissioner, advised to keep quiet?

Mr. KOSKINEN. I was absolutely not. Nobody——

Mr. DESANTIS. Okay. Can we play your clip of your testimony in front of this committee last——

[Video shown.]

Mr. DESANTIS. Okay. So you said you were advised, and now you're saying you were not advised.

Mr. KOSKINEN. Sorry. It's a good question. I was advised by the people in the organization working on the production of documents. And I was advised——

Mr. DESANTIS. So you were advised.

Mr. KOSKINEN. You asked me if I was advised not to say anything. I was not advised by anyone not to say anything. I was advised—in that clip, I noted I was at advised by our people doing the research——

Mr. DESANTIS. Okay, but that's——

Mr. KOSKINEN. —that there was a problem.

Mr. DESANTIS. —what we're saying. Because, to us, that's a distinction without a difference, because we're looking for the truth. And your organization has not provided us with the truth in a timely fashion.

What I'm seeing with Lois Lerner's emails is really a culture of obstruction at the IRS. I mean, for her to be worried right on the heels of this draft IG report that Congress may search her instant messages, ooh, perfect that, you know, the settings aren't like that, that is very, very troubling. Because she wants to be able to conduct her operations according to her ideology without oversight from the American people on behalf of the Congress. So that is very, very troubling to me.

And, you know, she's copying Nanette Downing, who is the head of the Exams department, which is very much troubling.

So what you've told us—last hearing, you said the hard drive crashed; well, these things happen. The odds of that happening innocently right on the heels of Dave Camp's letter are astronomical based on the hard-drive failure rate you gave us, based on the fact that it was those 10 days right after Camp, and based on the fact that it was totally unrecoverable. They recovered data from the Challenger explosion from 9/11. So somehow Lois Lerner's emails was totally unrecoverable.

So that is a coincidence of absolutely inexplicable proportions. And I think that's why the American people, 75 percent, do not believe the explanation that the IRS has provided.

Let me ask you this: Why are we just now hearing about this OCS system? We've supposedly had the FBI investigating this for a year. No one at the IRS ever told the FBI that there were communications using this system?

Mr. KOSKINEN. I didn't——

Mr. DESANTIS. Why didn't anyone at the IRS ever tell the Congress——

Mr. KOSKINEN. I never——

Mr. DESANTIS.—that there were these? The subpoenas are written very broadly, and they would absolutely have included this, not simply the email. So what is the reason for withholding that from Congress?

Mr. KOSKINEN. You asked a lot of questions. If I could answer them.

I have no information as to whether anybody told the FBI or not or who was interviewed by the FBI about the OCS system. So I have no basis of saying one way or the other. So I don't think it's fair to say nobody told them. We don't know whether anybody told them.

Secondly, we've produced the information to you, and you now have—the tax writers have all 67,000 Lois Lerner emails. You will soon have——

Mr. DESANTIS. With OCS, you've produced that?

Mr. KOSKINEN. And OCS, as they noted, at this point—the first I've heard about it; I'll look at this—says the OCS system, whatever it is, by itself does not get retained. But, as it's noted, you should assume—Lois Lerner is advised, you should assume that it's retained because it's easy to turn it into an email.

And I would also note, I have no—I'm not here to defend Lois Lerner. I've never met her. But in terms of getting rid of emails, it should be noted there were 43,000 Lois Lerner emails from April 2011 until May of 2013 that have been produced. So, in terms of getting rid of emails, there were 43,000 that she didn't get rid of after the hard-drive crash.

Mr. DESANTIS. Well, but that number is meaningless if there are critical emails that have not been produced, that have: "been destroyed." That means the American people aren't being given the whole truth.

And I yield back.

Mr. MICA. Okay. Well, we've finished one round. I have some additional questions; then I'll yield to other Members.

Well, we've gotten into a whole array of subjects. We started with a 25 percent error-rate payments, which is, I guess, the highest in government for Earned Income Tax Credits under IRS, and we've come around to some of the issues relating to the IRS probe.

I just read this Wall Street Journal article. I'd heard about it just a few minutes ago. It raises some questions with me. I guess the FBI began investigating, or at least told Congress June 11th, over a year ago, that they were conducting an IRS investigation.

Has this been going on over a year? Is that correct?

Mr. KOSKINEN. That's my understanding.

Mr. MICA. Yeah. And you came the end of last year, John; is that——

Mr. KOSKINEN. I started on December 23rd.

Mr. MICA. Yeah. Okay. And it said in January the Justice Department assigned the IRS probe to an Obama donor, Barbara Bosserman, an attorney in the Civil Rights Division. So, since January, basically since the time you took over IRS, she took over the investigation.

So you have not had any conversation with Ms. Bosserman?

Mr. KOSKINEN. I've had no conversation with anybody at Justice about this investigation.

Mr. MICA. Or FBI?

Mr. KOSKINEN. Or the FBI. I've had, actually, no conversations with any of the staff investigators or——

Mr. MICA. You see, I mean, this raises a lot of questions. Maybe some of them you don't know the answer to. But it's startling that a supposed investigation that's been going on for over a year, you're the new IRS Commissioner sent in to clean up the mess, and, in fact, you have not spoken to them.

Mr. KOSKINEN. Well——

Mr. MICA. Is there any of your—have any of your folks that have been involved in this—can you name someone who has talked to the FBI?

Mr. KOSKINEN. I can't, but if the FBI——

Mr. MICA. Can you provide us with information as to who—I mean, there must be some record of some contact. This investigation supposedly has been going on since June 11th. Congress notified over a year ago. You came in. They haven't talked to you.

Mr. KOSKINEN. But they wouldn't talk to me because this investigation goes from 2009 to 2013 and I wasn't there.

Mr. MICA. Well, I know, but, again—and you don't know who they've talked to. But can you provide us with who they talked to when?

We're trying to figure out who knew what when, to quote the late Howard Baker, and some of the pieces to the puzzle don't fit. Again, it raises a lot of questions.

Mr. KOSKINEN. To the extent I'm able, I'm happy to see if we can provide you that information.

I do know, from having spent a lot of time with inspectors general my last time around in the government in the 1990s, that investigators sometimes are very hesitant to have their witness list known, the people that they've actually talked to who they're investigating. But to the extent that that information is available, I'm sure we can provide it to you.

Mr. MICA. Okay. It, again, raises some very serious questions.

Back to the payments, we'll look at your legislative suggestions, Mr. Connolly and I. Maybe we can address those.

Tell me, physically, where do they process the Earned Income Tax Credit returns? Is that done around the country? At——

Mr. KOSKINEN. Yes.

Mr. MICA. —one location?

Mr. KOSKINEN. No. Basically, we have processing plants all around the country, so it depends where you are.

Mr. MICA. Yeah.

Mr. KOSKINEN. And they are—they come in just like regular returns.

Mr. MICA. And, again, John, you've been around a long time. I just come from a business background. If I was losing 25 percent in improper payments, I would have someone come in and give me an analysis. There are a lot of good firms around you have the ability to contract. I think—and asking for billions just doesn't cut it. I think you've got a technical and a software, electronic evaluation issue. And it's astounding, the amount of money that's involved here and——

Mr. KOSKINEN. Yes.

Mr. MICA. —again, the percentage of errors. But I think we need to get someone in there immediately, if not sooner, and see if that can't be corrected.

Mr. KOSKINEN. It would be helpful. As I say, we've had several GAO reviews, several inspector general reviews over time, independently making recommendations.

Mr. MICA. And Mr. Connolly and I have discussed, we held one hearing in August on identity-theft-related tax fraud issues. We haven't gotten into a lot of that. We put some things in the record,

but that doesn't seem to be clearing up the way it should. And that's a multi——

Mr. KOSKINEN. That one I think we're making more progress on.

Mr. MICA. Well, again, the information we had last August—and that's why we'll hold another hearing.

Mr. KOSKINEN. I'd be happy to come back and talk with you in more detail about that.

Mr. MICA. And we will definitely have that.

Mr. KOSKINEN. As I've told our people, I think we have a good story on identity theft and refund fraud. And I have been unhappy and I don't think we have a good story thus far on EITC improper payments. I think it's——

Mr. MICA. Well——

Mr. KOSKINEN. —been there too long at too high a level. And we need to actually—so I've asked people to go back to the drawing board and rethink everything we do in that area.

Mr. MICA. Well, I just came back from a week in the district, and I can tell you, Mr. IRS Commissioner, that there is a canyon of disbelief and a lack of credibility the size of the Grand Canyon when it comes to the general public and the IRS operations right now. It's huge. And people are not buying, again, some of the information that's been put out there.

Let me yield to Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman. I'm glad we're returning to the subject matter of the hearing.

Ms. Davis, I'm not sure I understood your answer to my question through Mr. Meadows.

The suspicion up here is that probably the number we're using right now, $106 billion a year in improper payments, understates the extent of the problem. Given the fact that DOD does not yet have an unqualified audit, by definition, their numbers could be squishy—hopefully they're not, but they could be; given the fact that Mr. Koskinen does not include refund fraud as an improper payment, even though, in the case of Dr. Agrawal, Medicaid fraud is a subset of improper payments.

So please elaborate. Because we kind of have the impression we're understating the number, and I couldn't quite understand your answer, which seemed to be, no, it's pretty accurate. Did I misread you?

Ms. DAVIS. We have stated in our audit of the financial statements, the consolidated financial statements in the last fiscal year that there's material weaknesses in internal control government-wide because of the inability, at this point in time, to actually get a handle of the number, to actually determine the full extent of improper payments and, of course, to ensure that appropriate actions are taken to reduce them.

You know, there are so many facets in this. As you are aware, this coming year, in 2014, the definition of "significant improper payments" is actually going to change. The rate is going down from 2.5 percent to 1.5 percent, and $10 million and/or still, you know, the "million" as being the criteria. We think that there is a possibility, certainly, of additional programs being added as the requirements for addressing and assessing and identifying improper payments change.

There are so many facets. As I mentioned just a few minutes ago, the fact that additional programs are being recognized and are coming onto the government-wide estimate, that's positive, in the respect that now additional estimates are being, you know, shown, identified. And, therefore, one would assume programs can take appropriate action, now that they have identified these additional, you know, internal control issues related to improper payments and take actions to reduce them.

So, you know, the bottom line is that we are—the Federal Government in total is unable to really identify the amount, and, as time progresses, we will see changes in that amount.

It is important to note, I will say, that, you know—and this has been mentioned before, but improper payments includes errors or insufficient documentation of errors. So it doesn't necessarily mean that money has been inappropriately spent.

Mr. CONNOLLY. That's right.

Ms. DAVIS. And, also, the total includes underpayments as well as overpayments.

It's a very complicated issue. It's not simple.

Mr. CONNOLLY. Of course.

Ms. DAVIS. We'd like to see the numbers go down. We'd absolutely like to see the rate go down. That's a very positive aspect of the program.

Mr. CONNOLLY. Is it GAO's view that some infusion of targeted strategic resources could make a big difference?

Ms. DAVIS. You know, that's a difficult question to answer, but let me—let me say that there are certain areas where—and I think that, you know, as the subcommittee has noted, there are certain areas that really need more attention. The healthcare areas, as was mentioned, you know, looking at the two Medicare programs, the Medicaid—and, actually, if you add the prescription drug program, which is around $2.8 billion, close to $3 billion, you're talking about $64 billion in improper payments, you know, compared to the government-wide total of $106 billion. So you're talking about over 60 percent of the government-wide total, you know, is attributable to this area.

So, to the extent that we can focus on areas—as, you know, learned through this discussion here today at the subcommittee, EITC has a very high rate. And what is of concern, too, is the fact that this rate has actually increased. It was a little under 23 percent last year; it's now 24 percent.

But, also, one of the big healthcare programs, Medicare Fee-for-Service, that rate has gone up. It's now 10.1 percent. It used to be, I think, 8.5 percent the year before. So you're looking at, you know, issues related to programs increasing their rates, you know, which is something that needs to be addressed.

Mr. CONNOLLY. Well, but my question was not whether it needs to be addressed. We agree on that. I'm actually asking you to go out on a limb. Would targeted resources make a difference, in GAO's opinion? Or have you even looked at that? "We can solve this problem without a dime extra"; is that your position?

Ms. DAVIS. I don't think we've done any work that could specifically address your question, and——

Mr. CONNOLLY. Well——

Ms. DAVIS. —I would be hesitant for that reason to answer it specifically with a "yes" or "no."

But, as you can see, because there are areas of concern, you know, there needs to be attention. Now, whether that can be accomplished with existing resources or additional resources are needed, I would turn to the agencies to address specifically those questions.

Mr. CONNOLLY. Well, I would just respectfully say to you, Ms. Davis, that once in a while Congress actually looks to GAO to give recommendations, not just analysis of problems.

And your own agency has been before this committee and testified as to the efficacy of additional resources for it. So if we are to assume that some more resources for some more investigators and auditors at GAO can really save us money, can help uncover problems that, you know, could make us more efficient and less wasteful, it might follow that these other agencies could benefit from that, too.

Not to say money is the answer, but, as I said in my opening statement, you can't take the position that money is never the answer. I mean, sometimes targeted investments can really have big payoffs. And that's my point, and I look to the GAO someday to actually comment upon that in a meaningful way.

Thank you.

Mr. MICA. I thank the gentleman.

Mr. Meadows?

Mr. MEADOWS. Thank you, Mr. Chairman.

Let me follow up a little bit on that, in terms of numbers, Mr. Koskinen, because I looked at the numbers. And I want to give you the resources to do the job that you need to do to get this 30 percent, 25 percent, whatever it is, under control.

Mr. KOSKINEN. Right.

Mr. MEADOWS. I'm not convinced—and what I guess I need you to respond to—I'm not convinced that people or dollars make a difference.

And the reason I say that is that, in fiscal year 2010, when your budget was higher and your employees were higher, the improper payments were also higher. Can you explain how that would happen?

Mr. KOSKINEN. Actually, you probably have the numbers. When I looked at them, over the last 6 to 8 years, what concerned me was the numbers have been more or less flat. So they've been the same, as you say, whether we had more people or not.

And that's why, when I asked people to go back to square one and meet with me several times to figure out what is it that we need to do, the focus came on the legislative issues, that we need more authority to be able to stop refunds earlier, that we see that, otherwise, to make those corrections, we have to go out and do an audit, but each one is small enough that, as you say—my judgment and ours is that we can't audit our way out of this. We can't be tracking down each one. We've got to be able to, when we see the error against our other databases, be able to correct it right then, rather than send it out and then have to do an audit and track people down.

So I do think the legislative changes—I think the taxpayer regulation will help. As noted, 57 percent of the returns are by tax preparers——

Mr. MEADOWS. Okay. And I knew you were going to go through there, and so let me ask you—and I'm sorry to interrupt you.

Mr. KOSKINEN. No, that's okay.

Mr. MEADOWS. I'm trying not to be rude. I know you get interrupted a lot.

So let me just, since you're going there, how is regulating preparers that want to abide by the law going to fix the fraud and those who—really, 30 percent, some of it is error, but we've had testimony from your predecessor that would indicate sometimes we had a thousand payments going to one particular address, and you know that's accurate.

And so how would additional regulators on preparers, who are well-intentioned, maybe make an error, actually substantially reduce this? Because I read your testimony, and that one was like nails on a chalkboard to me.

Mr. KOSKINEN. It's a good question. The regulation is relatively straightforward. It requires basically passing a minimum competency test and taking continuing education. So for preparers——

Mr. MEADOWS. Yeah, but that just—I mean, listen, I was in the real estate business, and you know what?

Mr. KOSKINEN. If you pass the basic course, you'll be in there. And what it'll do——

Mr. MEADOWS. But this is not about basics.

Mr. KOSKINEN. But what it will do, is our judgment, is we won't—the fraudsters, the people who are actually out keeping the refunds——

Mr. MEADOWS. But that's what this is really about, is fraudsters.

Mr. KOSKINEN. But it will allow—so the question is, if you're a taxpayer, how will you be able to distinguish—if you're in a moderate-income community, an immigrant community, or any community, what this will allow, you would get a certificate that said you've registered with the IRS, you've taken the courses, you've tried to become informed. And I suspect the fraudsters aren't going to do that.

And so what it will do is it will allow taxpayers to be able to have a more——

Mr. MEADOWS. So like a Good Housekeeping Seal of Approval.

Mr. KOSKINEN. A Good Housekeeping Seal of Approval.

Mr. MEADOWS. Okay. All right.

Let me go on. I'm limited on time, but I'll listen to further discussion on that.

Dr. Agrawal, I know that in a May 20th hearing you were asked for some information from Mr. Chaffetz and Mr. Lankford, and you were given a time to respond by June 19th. And that was almost 3 weeks ago, and we've received nothing with regards to that response.

Can we expect a response to their questions with regards to the Medicare mismanagement by the end of the week? Are you working on that?

Dr. AGRAWAL. We are working on it. And I'll check immediately after this to make sure that you get a response as soon as possible.

Mr. MICA. So what kind of timeframe do you need?

Dr. AGRAWAL. I think a week or 2 would be great.

Mr. MICA. Okay. So in 2 weeks, no later than 2 weeks, we can have your response?

Dr. AGRAWAL. Sure.

Mr. MEADOWS. All right. Thank you.

I want to also go back, in my last remaining time, Mr. Koskinen, since it's been illuminated that we have this record problems with this new system that we just found out about, that's not news to your staffers, is it, that they would have an internal communication that is not email?

That is probably not even news to you. You may not have known the name, but you've certainly seen people communicating in your agency via a messaging system that is not email; isn't that correct?

Mr. KOSKINEN. No, I've actually never seen that.

Mr. MEADOWS. You've never seen that?

Mr. KOSKINEN. No, I have not seen that in operation.

Mr. MEADOWS. You've never seen anybody communicating in your agency——

Mr. KOSKINEN. I've never gotten anything that was——

Mr. MEADOWS. Okay. Well, you've got a couple of staffers.

Have you guys seen that, behind—I mean, have they seen it?

Mr. KOSKINEN. I don't know.

Mr. MEADOWS. Yeah.

Mr. KOSKINEN. They said they have. They've been doing it for a while.

Mr. MEADOWS. It's like instant messaging. I mean, I know that——

Mr. KOSKINEN. I don't do instant messaging either, so I'm probably out of touch.

Mr. MEADOWS. Yeah, me either. But let me tell you my concern, is the OMB—and we've got Ms. Cobert here today—gave guidance in 2012 to have a senior official, a special person within each agency to make sure that we have compliance with regards to records.

Who's your senior person within the IRS or Treasury that you would've appointed according to that guidance?

Mr. KOSKINEN. There's a man, whose last name I don't know, who is in charge of the records. We have 2,000 information resource counselors——

Mr. MEADOWS. That's not what I—it says that you're to designate a senior agency official. So who is that?

Mr. KOSKINEN. I don't know his name, but there is one. Actually, he just wrote a letter to NARA. Maybe I have a copy of the letter. Hold on.

No, I don't. But we just——

Mr. MEADOWS. But when you found out, the last hearing, that you didn't comply with the laws, the Federal records, did you go back to that person and say, you know what, you messed up?

Mr. KOSKINEN. No, what I—actually, even before then, I've gone back and said, we have to have a better——

Mr. MEADOWS. So you've talked to him; you just don't know his name or her name.

Mr. KOSKINEN. I did not talk to him personally. But I do know that, actually, ironically, I did go back and ask for more informa-

tion. And it turned out, when NARA did a review in 2011, we got a score of 93, and when they did a review of our record management system in 2012, we got a score of 99. So I think it——

Mr. MEADOWS. So did it include those instant messages in that scoring?

Mr. KOSKINEN. I have no idea.

Mr. MEADOWS. Can we find out?

Mr. KOSKINEN. I'm sure we can.

Mr. MEADOWS. Okay.

And I'll close with this, Mr. Chairman.

We have been denied access, the Oversight Committee, to your senior official in terms of technology, the people that are providing all these documents. I can't imagine why, if you had nothing to hide, we would be denied access to those types of people.

Can I have your commitment here today that you're willing to make them available for us to ask questions, both the majority and the minority?

Mr. KOSKINEN. Yes. As I've said, we've told the IG we're not going to interfere with his——

Mr. MEADOWS. But that wouldn't interfere. Would you be willing to commit to the committee today that we can have access to those individuals to ask them questions? Yes or no?

Mr. KOSKINEN. Yes. We've already—actually, you've already had a briefing from——

Mr. MEADOWS. So we can call them, you will identify them today——

Mr. KOSKINEN. No——

Mr. MEADOWS. —and let us go ahead and start interviewing.

Mr. KOSKINEN. No. I should make it clear, and I thought I had made it clear, that we've agreed to the IG's request that we not do anything to interfere with his investigation——

Mr. MEADOWS. Well, that's not what the IG—the IG didn't say that.

Mr. KOSKINEN. IG has asked us——

Mr. MEADOWS. The IG asked you to cooperate. He didn't say——

Mr. KOSKINEN. No, that's——

Mr. MEADOWS. —to not provide information or cooperate with us, did he?

Mr. KOSKINEN. The IG asked us——

Mr. MEADOWS. I mean, we have information that would indicate he didn't say that.

Mr. KOSKINEN. What the IG asked us was to give priority to his investigation and not do anything that would interfere with it, including talking to anyone that he was going to be talking to.

So we have not pursued—we have told him, as soon as he finishes his investigation, we will provide—and you can have discussions with anybody you would like. We will do that.

Mr. MEADOWS. I'll——

Mr. KOSKINEN. We're committed to that.

Mr. MEADOWS. I'll yield back. I thank the patience of the chair.

Mr. MICA. Okay.

Mr. Clay, the gentleman from Missouri, is recognized.

Mr. CLAY. All right. It's Mr. Clay of Missouri, Mr. Chairman. You remember. You're thinking of Bill Gray, but——

Mr. MICA. I apologize. I did that——

Mr. CLAY. You served with Bill Gray, I understand.

Mr. MICA. —twice today, and I know you very well.

Mr. CLAY. I know.

Mr. MICA. I had us in a different place. Thank you.

Mr. MEADOWS. He is looking at the ranking member's hair as he looks by you.

Mr. MICA. That's the second time.

Mr. CLAY. It always helps to have levity in here.

Mr. Easton, according to a 2012 GAO report, two DOD programs were excluded from OMB's estimation of government-wide improper-payments amount. These two programs, the Defense Finance and Accounting Service Commercial Pay and U.S. Army Corps of Engineers Commercial Pay, spent nearly $400 billion in 2011.

The reason for the exclusion was that those programs were still developing their estimating methodologies. In other words, they didn't know how bad their improper-payment problem was.

Mr. Easton, have they figured that out yet?

Mr. EASTON. They did. And, in fact, we did report both of the numbers for the Commercial Pay program and for the Army Corps of Engineers. The decision was apparently made to exclude the numbers that we reported because of questions about the statistical sampling estimation methodology. And there was one in place in both of those programs.

Since then, at the recommendation of the GAO, we've gone back and in both cases implemented an adequate—and we would welcome GAO to come back and validate that—program for both of those.

Mr. CLAY. Okay. So are these programs' expenditures able to be included in the next OMB government-wide estimation?

Mr. EASTON. Yes, sir.

Mr. CLAY. Yeah. Okay.

And I do understand that the DOD's estimating processes for these programs is different from methodologies it uses for other programs. Why is that the case?

Mr. EASTON. In the case of the Commercial Pay program—that was the specific program that was identified by GAO—there was some concern about the variability of the payments. We can make very, very small payments to very, very large payments.

And we were using, when we initiated the methodology, more of a simple statistical sampling methodology. And my understanding is that they recommended, and we implemented, a stratified sampling methodology. So that was the distinction.

Mr. CLAY. Okay.

And, Ms. Cobert, could you comment on the estimation methodologies used for these two programs?

Ms. COBERT. We, in our oversight role, have worked with DOD and incorporated the feedback from GAO and believe that the sampling methodology, improved sampling methodology that Mr. Easton described is now a sound one. That's why we've included those numbers in this past year.

Mr. CLAY. Okay. Thank you.

On another subject, my colleagues on the other side of the aisle have spent a significant amount of time today focusing on whether or not Lois Lerner has tried to hide information from Congress. They have suggested that Ms. Lerner has done so by intentionally crashing her hard drive and by using an intra-office chat system at the IRS called "OSC" to avoid leaving records on email.

I have just a few follow-up questions relating to this topic. One, Mr. Commissioner, does the IRS have a policy to withhold information from emails in order to obstruct congressional information?

Mr. KOSKINEN. No.

Mr. CLAY. Is the IRS policy to comply fully with all congressional document requests and subpoenas?

Mr. KOSKINEN. It is.

Mr. CLAY. Has the IRS been complying fully with all congressional document requests and subpoenas that it has received to date?

Mr. KOSKINEN. We are. It takes longer than people expect and longer than we would like. We've spent about $18 million doing it. But we are doing our very best to be totally compliant.

Mr. CLAY. And about how many documents have you supplied to Congress to date since you got there?

Mr. KOSKINEN. Tax-writing committees overall have just a little less than a million documents. Since I've been here, we've probably provided 300,000 or 400,000 of those.

Mr. CLAY. Do you think we're going to read all of that, Mr. Chairman?

Are you aware of any IRS employee intentionally withholding information in order to obstruct any congressional information?

Mr. KOSKINEN. I am not.

Mr. CLAY. And I thank you very much for——

Mr. CONNOLLY. Would my friend yield?

Mr. CLAY. If the chairman would let me.

Mr. MICA. You have plenty of time. Go ahead.

Mr. CLAY. Yes, I yield.

Mr. CONNOLLY. I thank the chair, and I thank my friend.

Is it my friend's understanding, my friend from Missouri, that—with respect to the issue of did somebody deliberately crash their hard drive, maybe the inference to be drawn from that might be, well, it's otherwise a rare event in the IRS that a hard drive crashes.

And is it my friend's understanding that at our previous full committee hearing the statistic was 3,000 hard drives in the IRS alone have crashed so far this year, with almost half the year still to go?

Mr. CLAY. That is the testimony——

Mr. KOSKINEN. I think it's actually 2,000.

Mr. CONNOLLY. I thought we heard 3,000 in the testimony, but all right, 2,000. That means we're kind of on track to get somewhere shy of 4,000; is that correct? Hardly an unusual event.

And was it further my friend's understanding from the testimony received that one of the reasons for that is that a lot of the computers at IRS have not been updated according to industry standards, they're kind of old by technology standards?

Mr. CLAY. And my friend from Virginia, and we know why that is: Because in the past 4 years there have been dramatic cuts to the IRS budget, mostly initiated by this House and the appropriators who are responsible for that budget.

Mr. CONNOLLY. Right.

And let me finally ask my friend, much has been made of the fact that apparently staffers of the IRS resorted to Gmail and Gchat and they actually used those private vehicles for official business; is that correct?

Mr. CLAY. Yes.

Mr. CONNOLLY. Can you imagine if we applied the same standard here on Capitol Hill to our staff and ourselves? Perhaps it'd be embarrassing information, but not necessarily—in fact, almost certainly not sinister. Would that be a fair characterization, my friend from Missouri?

Mr. CLAY. That would be fair, but I'm glad we have a firewall.

Mr. CONNOLLY. I thank my friend.

And I thank the chairman.

Mr. CLAY. You're welcome.

And I yield back.

Mr. MICA. I thank the gentlemen for their little colloquy there.

I'll go back and tell my folks that they can—I tried to explain to them that they keep their records for 50 years but they can't keep emails for 27 months. I talked about the credibility of—Mr. Jordan?

Mr. JORDAN. I thank the chairman.

I'll just pick up where Mr. Clay was. It seems to me that the IRS had three duties here and they've breached all three.

First, they have a duty to preserve documents. We know they didn't do that. They didn't do that right. They had some 6-month tape that recycled, et cetera.

They had a duty to produce the documents that we actually subpoenaed. They can't do that because they lost them; they didn't preserve them.

And then they had a duty to disclose once they knew that they didn't preserve and couldn't produce. And they didn't do that in a timely fashion.

So they had three duties. They breached all three.

And Mr. Meadows, I think, asked an important question. We want certain people to come in front of this committee and elaborate on the fact that they've breached these three duties they had to the American taxpayers, the American citizenry. And they're saying they can't because the Inspector General told them they couldn't do it.

So my question to you, Commissioner, is, how is cooperating with Congress' investigation going to impede any Inspector General investigation?

Mr. KOSKINEN. My understanding, the concern of the Inspector General is that he is actually talking to everybody who knows anything about the email situation and the crash of the hard drive. He has asked us not to talk to any of those people, asked us to give priority to his investigation——

Mr. JORDAN. And you know what? We'd be happy to work around his schedule. If the Inspector General wants to interview one of the

witnesses we want to interview and he wants to interview them at 10:00, we'll say, you know what, we'll do it at 12:00.

Mr. KOSKINEN. The Inspector——

Mr. JORDAN. You want to do it at 1:00, we'll do it at 3:00.

Mr. KOSKINEN. My——

Mr. JORDAN. We'll do it the next day. We're happy to work.

What we want from you is a commitment for these people. The committee sent you a letter 3 weeks ago. Thomas Kane, Acting Deputy Associate Chief Counsel for Procurement and Administration, will you commit to letting Mr. Kane come and talk to this committee and the American people?

Mr. KOSKINEN. I've said that when the Inspector General is done——

Mr. JORDAN. No, no, no, no. I mean soon. We want this to happen this month. We're not—we want——

Mr. KOSKINEN. I didn't ask——

Mr. JORDAN. This has been a year investigation, Mr. Commissioner. We want it to happen. You wait 2 months to tell us you lost to the emails. We want to get to the truth as quickly as possible.

We've got key witnesses: Thomas Kane; Lillie Wilburn, Field Director, Information Technology Division. Will you commit to letting her come talk to us this month?

Mr. KOSKINEN. I am sure she's one of the people the Inspector General is going to talk to. I have told and talked with the Inspector General. As soon as he's done talking to a witness, we're happy to have them come——

Mr. JORDAN. What does that—what is the big deal?

Mr. KOSKINEN. The big deal——

Mr. JORDAN. If the Inspector General wants to talk to him Monday, we'll talk to him Tuesday. If he wants to talk to him on Tuesday, we'll talk to him on Monday.

Mr. KOSKINEN. Because the big deal is everybody, at least——

Mr. JORDAN. How about John McDougal, Senior Trial Counsel, Office of IRS Chief Counsel? Will you commit to letting us talk to him?

Mr. KOSKINEN. My answer is the same. As soon as the Inspector General completes his investigation——

Mr. JORDAN. How convenient. How long is that going to take? Two months?

Mr. KOSKINEN. I didn't ask——

Mr. JORDAN. Three months? One year like the first audit took?

Mr. KOSKINEN. The Congress asked the Inspector General to do this investigation. The Inspector General is committed to doing it quickly. Everyone has been interested in an independent review, which the Inspector General——

Mr. JORDAN. We're all fine with that, but there is no reason we can't run our investigation at the same time he's running his.

Mr. KOSKINEN. The Inspector General has advised us he doesn't think that he can get an independent review of all of this if other investigations are going on.

Mr. JORDAN. Let me switch subjects here. I'm actually going to try to stay in my—I appreciate the chair's leniency on the time earlier.

Let me ask you this. To your knowledge, have any of these instant messages, any OSC messages been turned over to Congress in the last year?

Mr. KOSKINEN. I assume any of them that is noted in the process there that were preserved as emails have all been turned over.

Mr. JORDAN. Have any that weren't preserved as emails been turned over to Congress? Do you know?

Mr. KOSKINEN. All I know about the system is what I see in the emails. And, apparently, if you don't save them, they don't exist.

Mr. JORDAN. That's a question we need to find out. Well, I mean, who knows? You're telling us there's still thousands of emails you have to get to us. So even if they've been turned into emails, they may not have been turned over to us.

I'm asking, do you know if any of the OCS messages, whether in instant messaging form that are somehow preserved or put into emails, have they been turned over to us? And your response is you don't know.

Mr. KOSKINEN. I don't know. And we'll be happy to let you know——

Mr. JORDAN. And we'd like that information soon. Not based on when the Inspector General tells you you can give to us, but soon.

Mr. KOSKINEN. That information we'll give you soon.

Mr. JORDAN. Yeah, like tomorrow if you can get it. You've got the guys back behind you who use it. Go find some folks at the IRS who understand how quickly this works, and get that to us.

Mr. Chairman, a whole new system—a whole new system that this committee didn't know about, the American people didn't know about, we find out just a couple days ago exists, and we don't know whether we've got any of that information. That's the key point.

And the fact that they also are saying we can't talk to witnesses is just unbelievable. But hopefully we can make that happen this month, as well.

With that, I'd yield back, Mr. Chairman.

Mr. MICA. Let's see. Mr. DeSantis?

Mr. DESANTIS. Thank you, Mr. Chairman.

Mr. Commissioner, when you see the email with Lois Lerner when she writes that, "We need to be cautious about what we say in emails" because Congress has asked for those emails, what is your response to that? Does that bother you in any way?

Mr. KOSKINEN. I don't know the background in which she wrote that, so my sense is that she was not cautious. She said, I was cautioning about them, and then we had several occasions where they asked for them, and we need to be cautious because they're actually going to be searchable. And so I'm——

Mr. DESANTIS. Yeah. Right.

So, you know, we have a duty on behalf of the American people to exercise oversight over the executive branch. And she does not want to be subject to that oversight. So I think a lot of Americans would look at that, I think they'd be concerned that she would try to conduct her business in a way that was not on the up and up.

And so I'd just—as the Commissioner, you weren't here at this time; this doesn't reflect on you, what she wrote. But I do want to know now, is this something that you would be comfortable with,

if this is how high officials underneath your command behave themselves?

Mr. KOSKINEN. All I would note, as I say—you make a good point. I'm not here to defend Lois Lerner, I have never met her, she doesn't work at the IRS anymore.

All I would note is that she composed 43,000 emails, all of which at some point you will get very soon. All of them have already been——

Mr. DESANTIS. I'm asking you, what does this make you feel? Are you comfortable that high Federal officials are talking about this, are conducting themselves in this way? Is that good or not?

Mr. KOSKINEN. My view is that records should be kept, email conversations should be preserved. We need a better email retrievable system and a better system of record. That's the view I have.

Mr. DESANTIS. So you don't think the people who work for you at the IRS should change the way they conduct their business for the purpose of evading congressional oversight? Are you on the record as saying you agree with that statement?

Mr. KOSKINEN. I am on the record of saying nobody in this organization, any Federal organization, should do anything to evade oversight. I'm a big—I spent 4 years working in the Senate. The Senator I worked with——

Mr. DESANTIS. No, I understand.

Mr. KOSKINEN. —was part of the Oversight Committee, so I'm a big believer in oversight.

Mr. DESANTIS. Can I—I just want to clear up a couple inconsistencies in your testimony.

I had showed you your comment about being advised. You initially said you weren't advised. Then I referred back to it. Then I think you've clarified that to say you were not necessarily advised by somebody in the administration; it was that the document producers advised you that it would be better to turn it all over at once.

So is that how you reconcile those statements?

Mr. KOSKINEN. No. I'm sorry. No, no, no. I was not advised by anyone. It was my decision that the best way to proceed, once we knew there was a difficulty, was to find out the full context so we could make a complete report. I was not advised by anyone to do that inside the IRS or outside.

I think the question being——

Mr. DESANTIS. So you just misspoke in your testimony last——

Mr. KOSKINEN. Pardon?

Mr. DESANTIS. So you misspoke in the video clip we played when you said you were advised?

Mr. KOSKINEN. No, I—I'd be happy to see the clip again. My point was that was on a different issue.

My point has been all along it was my decision—and I remember clearly, I think, testifying to that—it was my decision that we should get to the bottom of the situation, collect all the emails we could find, and give the Congress a full report of what the situation was. And that's what we did. We published that report and gave it to you.

Mr. DESANTIS. I think we can replay it at the appropriate time, but Chairman Issa was asking you about this specific issue about why you did not turn it over to Congress for 2 months.

Let me ask you this.

Mr. KOSKINEN. I'm sorry. My——

Mr. DESANTIS. If the person——

Mr. KOSKINEN. My recollection of that is, I was—what I was saying was I was advised about the difficulty. I was not advised about delaying——

Mr. DESANTIS. In fairness, that clip, you did not say it was the difficulty; you just said you were advised and that's why you didn't do it. But we can deal with that some other—let me ask you this.

If the person who's currently in Lois Lerner's position wrote that email saying that, look, Congress looks for these things, we need to be careful what we say over email, let's maybe use this other system, would that be something that you would be comfortable with, if that individual who is in charge of this division right now were conducting themselves in that fashion?

Mr. KOSKINEN. My advice to anyone working for the IRS now is that they should not do anything that would look—appear to be, let alone be purposeful, to avoid oversight by the Congress.

Mr. DESANTIS. Do you think that you, as the IRS Commissioner, if you come before Congress and you testify and you either make factual statements that later appear not to be the entire truth or maybe you just misspoke, do you believe that you, as a high Federal official, as a civil officer of the United States, have a duty of candor to us to come back and correct the record?

Mr. KOSKINEN. I do. I don't know of any misstatements I've made, but I would agree totally with you, if there is an inconsistency or misstatement, I should come back.

As I said, I appreciated the chairman's letter to me giving me a chance to reconsider, and I reconsidered and thought that my statement was fine as stated.

But I don't know of any problems. But I do think, in all candor, if someone has found an issue, I'm happy to come back and explain it or discuss it further. As I told the chairman, I would stand by and I do stand by my testimony. But if I can provide clarification, I'm happy to do that.

Mr. DESANTIS. I yield back. Thank you.

Mr. MEADOWS. Would the gentleman yield——

Mr. DESANTIS. Yeah.

Mr. MEADOWS. —for just one quick question?

Mr. DESANTIS. I yield to the gentleman from North Carolina.

Mr. MEADOWS. You know, you keep using one term. You say, I've never met Ms. Lerner, you know, I don't know her. Have you communicated, either directly or indirectly, with her or with her attorneys, directly or indirectly?

Mr. KOSKINEN. I've not directly or otherwise communicated with her. I met her attorney on a tennis court. He played on the court next to me in the middle of the wintertime. I've never talked to him about the case. I've never communicated with Ms. Lerner. I wouldn't know how to communicate with Ms. Lerner.

Mr. MEADOWS. Okay. Thank you.

I yield back.

Mr. MICA. We have—Chairman Issa has returned.

Did you seek time?

Mr. ISSA. Thank you.

Mr. MICA. You're recognized.

Mr. ISSA. Just briefly—and I apologize that I had to go to the other committee—in light of this OCS development, do you have an opinion, Commissioner, on how long before we'd be able to get an understanding of the capabilities of how much of it is preserved on tapes since you began preserving?

In other words, if you have 6 months of backup, I would presume that this communication system would have 6 months, the last 6 months' worth of the use of these communications, but perhaps not further.

Are you aware of any of that since you became aware of this document?

Mr. KOSKINEN. I'm not aware of any of it. All I'm aware is we've produced every document we have of Lois Lerner's emails, however they were generated.

Mr. ISSA. But OCS is not an email system. It is a communication system that has capability of tracking. That's what the email tells us.

Mr. KOSKINEN. Right. I am happy to get you and the committee full information about how the system runs, what its backup is, what might exist wherever it might exist. And we'll get that to you promptly.

Mr. ISSA. Additionally, we asked for the names and an opportunity to interview the individuals who supposedly were not able to recover the data on Lois Lerner's disk. The reason that that's critical is that expert after expert after expert has said to us in very clear terms that there's no such thing as a drive that there's no data recoverable on.

And I might mention that one of them had recovered the last 17 seconds from the Challenger's disaster after the tape had been under water for a year. The fact is, these drives are recoverable.

So it is critical that as you look at prioritizing the fairly simple act in our interrogatories of giving us the names of the individuals and making them available so we can go through that process.

It's not our greatest desire to go down that road. Our greatest desire, obviously, is to get to the bottom and the top of who Lois Lerner worked with as she was targeting and deliberately treating conservative groups because of their values in a different way, an unfair way, to the way other entities were treated.

That has been a decision made by this committee, well-staffed. And, ultimately, as you know, the Ways and Means Committee has referred criminal prosecution against Lois Lerner. So that is the primary target. And what we're looking for primarily, of course, is to find out who worked with Lois Lerner in her operation to target conservative groups.

That's our big feature, but, along the way, we certainly want to know about the disk drive because it now has become a pretty unbelievable statement, that it was completely unrecoverable. It may have been unrecoverable through the techniques that they were using, but in your testimony you talked about extraordinary——

Mr. KOSKINEN. Right.

Mr. ISSA. —efforts.

This email that Mr. Jordan went through with you shows that she was very concerned with not being tracked. And that's inconsistent with a disk drive that we now understand was on a notebook computer, one that went in and out. And if I read the statements that we received on the computer she was using at the time, that was a computer she took home. So the so-called blue screen she discovered was probably a blue screen that she came to work with. It was a device that had these records on them and went in and out of, you know, your possession.

So I guess the question is, can we have those names in a timely fashion? It certainly doesn't seem like a difficult or time-consuming act to give us the names of the people in the interrogatories.

Mr. KOSKINEN. Exactly. And as I've said, the Congress has asked the IG to do an investigation. The IG has asked us to give it a priority and not to do anything that would interfere with their investigation of this very issue, which they hope to conclude promptly.

As I've said—and I've talked to the IG about it—as soon as they are through talking with a witness they're not going to have to talk to again, they will let us know, and we'll be happy to have that witness able to talk, and we'll provide you that information. As soon as the IG is done, we're happy to provide you any information you need and discussions you need.

Mr. ISSA. And, Commissioner, I want to be cooperative, and I know you want to be cooperative. Names of people is a different process from scheduling when we would work with them. And we certainly would coordinate with the IG to make sure that, if you will, that we deconflict any schedule of when we would talk to the same witnesses. But I think it is important that we have an understanding of the window, how many people we're going to be deposing.

And, you know, if you prefer, we can work directly with TIGTA. But, in the past, we've normally made the request to you and to Treasury, rather than working with the IG on the specifics. Like I say, we'll work either way.

Mr. KOSKINEN. Fine. We can each have our discussions with TIGTA.

Our discussion with TIGTA has been thus far that they didn't want us talking to anyone, they didn't want anybody else talking to them until they were through. Because, as they explained to me, they talk to a person, they talk to somebody else, then they want to come back and talk to the first person again, and if that person has been out talking to others, it begins to muddy the waters.

And so we've said they can have—the field is open, they can have anything they need, any documents they need. We've made sure they've always had documents because they're doing an investigation anyway, but we've made sure they have all the documents you've had. We've told them they can talk to anybody they like anytime and that we will stay totally out of the way. And that's what we're trying to do.

Mr. ISSA. So I just want to understand one more time. Your position is that it would be counter to the investigation being done by TIGTA if we were to interview or even know the names of any of

the individuals related to the disk and the other activities we're both investigating. Is that correct?

Mr. KOSKINEN. That's correct. That's my understanding.

Mr. ISSA. Okay. We will talk to the IG, obviously, directly. I think that would be appropriate——

Mr. KOSKINEN. That's fine.

Mr. ISSA. —that we hear it firsthand.

Mr. Chairman, Ranking Member, I'll take this opportunity to mention one interesting thing. I'm often asked by the press, when are we going to release all of our work product? When are we going to let witnesses basically see what other witnesses have seen?

I think the Commissioner, on behalf of the IG, has made the clear point that it is often selected information, limited information that's made available, but, clearly, you don't make all of the information available until you conclude your investigation.

And I note that because that has been the history of our committee, that most information remains unavailable to the public even though both sides have it.

So I respect the need to make sure the IG does have what he needs, and we'll work to make sure that we find some common middle ground. And I appreciate your willingness to take care of the other questions on the interrogatory.

Thank you, Mr. Chairman, Mr. Ranking Member. I yield back.

Mr. CONNOLLY. Mr. Chairman?

Mr. MICA. Mr. Connolly.

Mr. CONNOLLY. Just a brief comment on the chairman's—I really appreciate the chairman's line of inquiry here because we don't want to put the Commissioner in an impossible position, where we're putting a set of interrogatories to him and the TIGTA has sort of put them off-bounds pending the investigation.

So I welcome the chairman's desire to get further clarification from TIGTA so that we're not putting the Commissioner in an impossible position and we're not unwittingly treading on ground that needs to be protected.

So I thank the chairman for that clarification.

Mr. MICA. Well, I thank, first of all, the Members for their participation.

Actually, Mr. Connolly, we've done, I think, 23 hearings. We should count this as two.

Mr. CONNOLLY. You know, Mr. Chairman, I want to say this to you and Chairman Issa.

Mr. MICA. We've covered a lot of territory.

Mr. CONNOLLY. I belong to two committees that apparently practice the belief, passionate belief, that no human problem cannot be significantly improved with another hearing.

Mr. MICA. All right.

Well, again, an interesting, hopefully productive hearing. And we covered a great deal of information.

Most importantly, back to the original purpose, is the half-a-trillion dollars in improper payments, a whole host of other issues about fraudulent activity, gaming the taxpayers, that need to be resolved. And we will hold hearings, as many as we need, as I said before.

And we did divert a bit to some of the current IRS issues, but I appreciate everyone coming and participating. I thank our witnesses.

We'll leave the record open for a period of 10 days. You may have additional questions submitted from the committee to you, and we ask you be respondent and let us include that material as part of the record.

Mr. MICA. There being no further business before this Subcommittee on Government Operations, this hearing is adjourned.

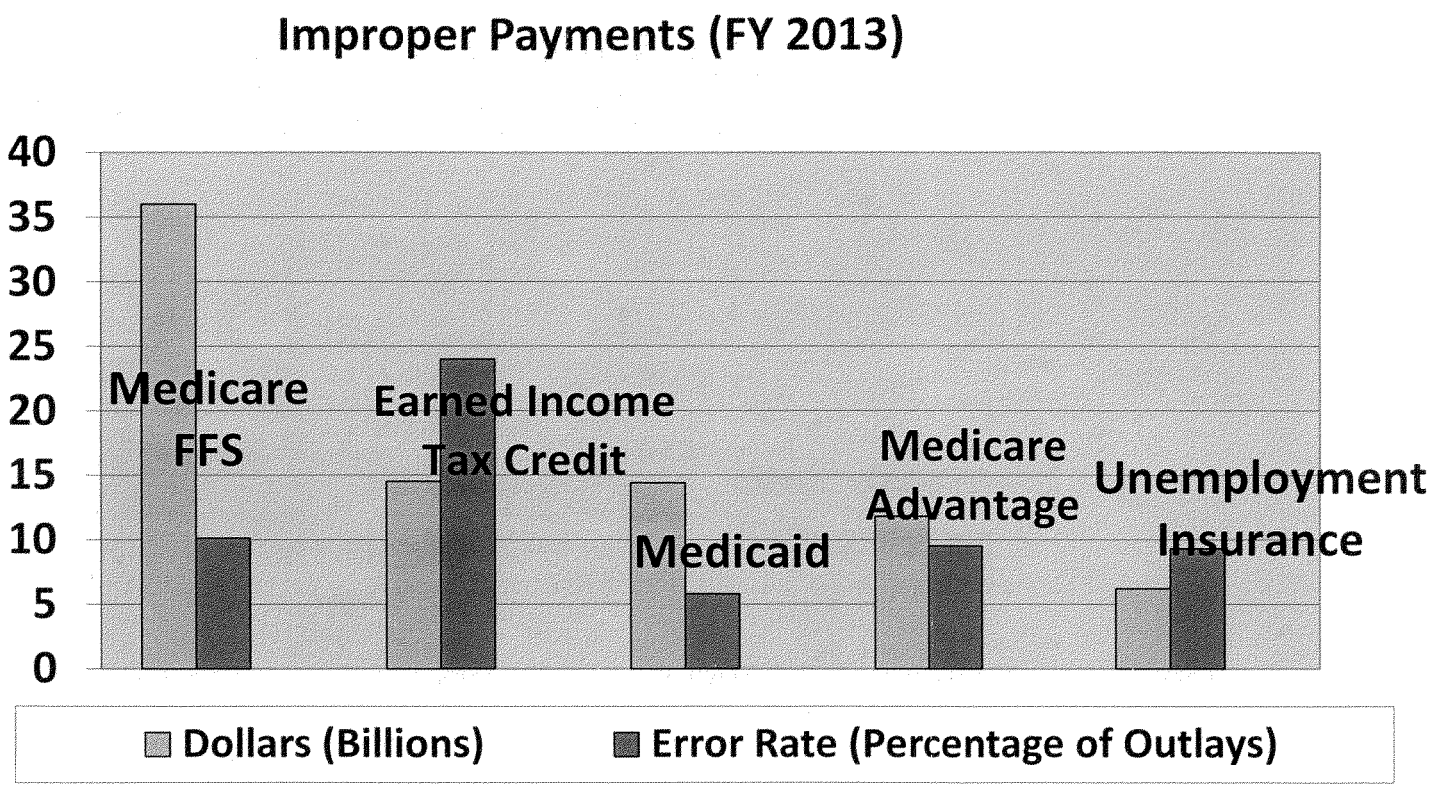
[Whereupon, at 4:38 p.m., the subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

FY	IP (% of outlays)	IP (amount)
2013	3.53%	$106 billion
2012	4.35%	$109 billion
2011	4.69%	$116 billion
2010	5.29%	$121 billion
2009	5.42% (highest)	$106 billion
2008	3.95%	$73 billion
2007	2.81%	$42 billion
2006	2.91%	$40 billion
2005	3.14%	$38 billion
2004	4.35%	$48 billion

Source: Office of Management and Budget, http://www.paymentaccuracy.gov/improper-payment-amounts;


Improper Payments (FY 2013)
40
35
30
25
20
15
10
5
0
Medicare FFS
Earned Income Tax Credit
Medicaid
Medicare Advantage
Unemployment Insurance
Dollars (Billions)
Error Rate (Percentage of Outlays)

July 29, 2013

REPUBLICAN GUIDANCE

"Examining the Skyrocketing Problem of Identity Theft Related Tax Fraud at the IRS"

Government Operations Subcommittee Hearing
August 2, 2013, 9:00 a.m. in 2247 RHOB

The Subcommittee on Government Operations will hold a hearing to examine the rapid growth of identity theft related tax fraud at the Internal Revenue Service (IRS). Identity theft-related tax fraud occurs when a fraudster uses a stolen name and Social Security Number to file a fraudulent tax return in the victim's name. If the victim has not filed a tax return yet, the fraudster can file a return and end up receiving a tax refund from IRS. It will review the IRS's inability to adequately detect or prevent identity theft tax fraud.

- **The amount of identity theft related tax fraud is skyrocketing.**
  - From FY 2011 to FY 2012, the IRS saw a 78 percent increase in identity theft cases.[1]
  - The Taxpayer Advocate Service, which provides assistance to victims, has seen a 650 percent increase in cases from FY 2008 to FY 2012.[2]
  - These are only known cases: No one knows how many cases of identity theft related tax fraud go undetected.

- **The cost of identity theft is over $5 billion per year and could be much higher.**
  - The Treasury Inspector General for Tax Administration (TIGTA) reported that the IRS could have paid out $5.2 billion in fraudulent claims in 2011.
  - TIGTA estimates that the IRS could pay $21 billion in fraudulent tax refunds in the next five years. TIGTA says that number "is conservative," and the actual amount of fraudulent payments could be much higher.[3]
  - TIGTA's estimates only include fraudulent payments the IRS did not identify, *not* payments the IRS made and later found to be fraudulent. The amount of known fraudulent payments was $70 million in 2011.[4]

- **The IRS is not adequately helping victims of identity theft.**
  - The number of taxpayers who have been victims of identity theft-related tax fraud has almost tripled in recent years. Fraudsters often target people who are unlikely to file returns, such as children, retired people, or deceased individuals. Service members who are killed in action are sometimes the victims of identity theft,[5] as are deceased children.[6]

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[1] Taxpayer Advocate Service, "2012 Annual Report to Congress," December 31, 2012.
[2] *Id.*
[3] Treasury Inspector General for Tax Administration, Treasury Inspector General for Tax Administration (TIGTA), "There Are Billions of Dollars in Undetected Tax Refund Fraud Resulting From Identity Theft," July 19, 2012.
[4] TIGTA, Testimony before the Committee on Oversight and Government Reform, November 29, 2012.
[5] Military.com, "Fallen Warriors Victims of ID Theft," June 12, 2011.
[6] Gannett News Service, "Dead Children are Attractive Identity Theft Targets," October 19, 2011.

- It can take over a year before a victim can resolve a case of identity theft related tax fraud. The average wait time is over 6 months.[7]
- As of September 2012, there were 650,000 cases of identity theft within the IRS that remained unsolved.[8]
- Many victims have experienced rude or discourteous service from the IRS. In 2011, a victim testified that when she called to ask about her case, the IRS representative "proceeded to yell and scream at me," and then hung up on her. The victim said, "The way I feel I have been treated by the IRS system has made me a victim a second time."[9]

- **There are not enough deterrents to stop people from committing this type of fraud.**
  - It is extremely easy to commit identity theft tax fraud. A thief only needs a name and a Social Security number to file a fraudulent return. The IRS rarely investigates identity theft related tax fraud, which makes it low risk for criminals.
  - Many tax programs, like Turbo Tax, allow users to receive tax returns on a prepaid debit card. This makes tax fraud even less risky, because debit cards do not have the same level of protection or identification requirements needed to create a bank account or cash a tax refund check.
  - The IRS often does not stop potentially fraudulent returns even if they are detected. The average amount of a fraudulent return is small, but many thieves file hundreds of returns and collect millions of dollars.
  - In Florida, former drug dealers now commit identity theft tax fraud instead, because as one suspect told police, "Why would I take the risk to sell drugs and get busted when I can put $10,000 on a card and do it all day long from home while the cartoons are on?"[10]

- **The IRS is not using its resources effectively to combat identity theft.**
  - The IRS has said it does not have enough resources to fully address identity theft. However, watchdogs including TIGTA and the Taxpayer Advocate Service have all made recommendations that could help prevent fraud without costing additional money. The IRS has not implemented many of these recommendations.
  - One recommendation is to consolidate the units working on identity theft within the IRS, which would provide better customer assistance and reduce duplicative work. There are currently 21 separate units that deal with identity theft at the IRS.[11]
  - The Government Accountability Office (GAO) has also recommended that the IRS use more information to stop fraud. The IRS has access to information that it does not fully use.
  - GAO has found that the IRS could save significant resources if it reprioritized its enforcement costs and more effectively allocated its resources.[12]

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[7] Taxpayer Advocate Service, "2012 Annual Report to Congress."
[8] *Id.*
[9] LaVonda Thompson, Testimony before the Committee on Oversight and Government Reform, June 2, 2011.
[10] Seminole Heights News, "Epic Tax Scam Uncovered in Tampa," September 4, 2011.
[11] Taxpayer Advocate Service, "2012 Annual Report to Congress," December 31, 2012.
[12] Government Accountability Office, "IRS Could Significantly Increase Revenues by Better Targeting Enforcement Resources," December 2012.

United States House of Representatives
STAFF REPORT

Oversight of Conference Spending Saves Taxpayers Hundreds of Millions of Dollars

Prepared for John L. Mica
Member of Congress
113th Congress

January 3, 2014

Executive Summary

This report is an examination of the impact of Congressional and Inspector General oversight of federal decision-making and spending on conferences. In 2009, Congressman John Mica (FL-07) began to look into irregularities in protocol and federal decision-making regarding conference locations and spending. At that time, Department and Agency conference planners contracted with little regard for budgetary considerations. As a result, taxpayers were forced to pay for outrageous federal junkets. Some of these conferences included high-priced food and entertainment as well as promotional items and improperly accepted gifts. Unfortunately, wasteful spending on federal conferences is not unique to a specific agency.

The federal government bears significant responsibility for wasting taxpayer dollars on unacceptable and unnecessary conferences. Congressional and Inspector General oversight has led to the implementation of tighter controls over conference spending and the elimination of frivolous and gratuitous expenditures. As a result of Congressional oversight, taxpayers have saved hundreds of millions of dollars at IRS, GSA, VA and DOD since FY 2010. These reforms and increased transparency have put Departments and Agencies on notice that wasteful spending on conferences will no longer be tolerated.

Based on estimated savings from these four agencies over past years, government wide savings from reductions in conference spending could reach as high as half-a-billion dollars annually.

Key Findings

For IRS, GSA, VA and DOD, Congressional and Inspector General (IG) oversight of federal spending on conferences has resulted in an estimated savings to taxpayers of more than $219 million since FY 2010.

- Prompted by Congressional and IG oversight, On November 9, 2011, President Obama issued Executive Order 13589 that directed - "Each agency, agency component, and office of inspector general should designate a senior level official to be responsible for developing and implementing policies and controls to ensure efficient spending on travel and conference related activities."

- As of FY2012, agencies are required to report annual spending on conferences in excess of $100,000.

I. IRS Conference Spending

- IRS spending on conferences decreased from $37.6 million in FY2010 to $4.9 million FY2012. This resulted in a net decrease of 87% from FY2010 to FY2012.

- ***IRS' reduction in conference spending equates to an estimated $64.1 million in savings to taxpayers since FY2010.***

- On June 6, 2013, the House Oversight and Government Reform Committee held a hearing on the IRS SB/SE All Managers Conference in Anaheim, CA.

  Hearing Findings:
  - IRS hired 15 outside speakers to present at the conference at a total cost of $135,000.
  - IRS spent $11,430 to have Shawn Anchor, a happiness expert, lead four 90-minute workshops.
  - Conference attendees received $64,000 in gifts, trinkets and swag. Some of these gifts included goodie bags containing frames, clocks, lanyards, mugs and plastic squirting fish.
  - IRS wasted $50,187 for two videos shown at the conference. The first was a Star Trek spoof and the second was referred to as the "Cupid Shuffle".

II. GSA Conference Spending

- GSA spending on conferences decreased from $10.9 million in FY2010 to $1.3 million in FY2012. This resulted in a net decrease of 88% from FY2010 to FY2012.

- ***GSA's reduction in conference spending equates to an estimated $14 million in savings to taxpayers since FY2010.***

- On April 17, 2012, the House Transportation and Infrastructure Committee held a hearing on GSA's 2010 Western Regions Conference in Las Vegas, NV.

  Hearing Findings:
  - GSA spent $136,504 on eight separate pre-conference scouting trips.
  - Conference attendees received gifts that cost of more than $23,000. These included commemorative coins, canteens, carabineers and a yearbook.
  - GSA spent $75,000 for a bicycle building team exercise.

III. VA Conference Spending

- VA spending on conferences decreased from $86.5 million in FY2011 to $7.5 million through the first nine months of FY2012. This resulted in an estimated decrease of 88%.

- ***VA's reduction in conference spending equates to an estimated $76.5 million in savings to taxpayers since FY2011.***

- On October 30, 2013, the House Oversight and Government Reform Committee held a hearing on the VA's 2011 Human Resources conferences in Orlando, FL.

  Hearing Findings:
  - VA spent approximately $98,000 on promotional items, including notebooks, water bottles, fitness walking kits, giant teddy bears and hand sanitizers.

IV. DOD Conference Spending

- DOD spending on conferences that cost in excess of $100,000 decreased from $89 million in FY2012 to $12.3 million through the first six months of FY2013.

- ***DOD's reduction in conference spending equates to an estimated $64.4 million in savings to taxpayers since FY2012.***

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