

IMPROPER PAYMENTS ELIMINATION AND RECOVERY
IMPROVEMENT ACT OF 2012

NOVEMBER 30, 2012.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. ISSA, from the Committee on Oversight and Government
Reform, submitted the following

R E P O R T

[To accompany H.R. 4053]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 4053) to intensify efforts to identify, prevent, and recover payment error, waste, fraud, and abuse within Federal spending, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Committee Statement and Views	6
Section-by-Section	8
Explanation of Amendments	9
Committee Consideration	10
Application of Law to the Legislative Branch	10
Statement of Oversight Findings and Recommendations of the Committee	10
Statement of General Performance Goals and Objectives	10
Federal Advisory Committee Act	10
Unfunded Mandate Statement	10
Earmark Identification	10
Committee Estimate	10
Budget Authority and Congressional Budget Office Cost Estimate	11
Changes in Existing Law Made by the Bill as Reported	12

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

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

SEC. 2. DEFINITIONS.

In this Act—

- (1) the term “agency” means an executive agency as that term is defined under section 102 of title 31, United States Code;
- (2) the term “improper payment” has the meaning given that term in section 2(g) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note), as redesignated by section 3(a)(1) of this Act; and
- (3) the term “State” means each State of the United States, the District of Columbia, each territory or possession of the United States, and each federally recognized Indian tribe.

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

(a) IN GENERAL.—Section 2 of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) is amended—

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

(2) by inserting after subsection (a) the following:

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

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

“(A) identify a list of high-priority Federal programs for greater levels of oversight and review—

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

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

“(B) in coordination with the agency responsible for administering the high-priority program, establish annual targets and semi-annual or quarterly actions for reducing improper payments associated with each high-priority program.

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

“(A) IN GENERAL.—Subject to Federal privacy policies and to the extent permitted by law, each agency with a program identified under paragraph (1)(A) on an annual basis shall submit to the Inspector General of that agency, and make available to the public (including availability through the Internet), a report on that program.

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

“(i) shall describe—

“(I) any action the agency—

“(aa) has taken or plans to take to recover improper payments; and

“(bb) intends to take to prevent future improper payments; and

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

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

“(D) AVAILABILITY OF INFORMATION TO INSPECTOR GENERAL.—Subparagraph (B)(i) shall not prohibit any referral or information being made available to an Inspector General as otherwise provided by law.

“(E) ASSESSMENT AND RECOMMENDATIONS.—The Inspector General of each agency that submits a report under this paragraph shall, for each program of the agency that is identified under paragraph (1)(A)—

“(i) review—

“(I) the assessment of the level of risk associated with the program, and the quality of the improper payment estimates and methodology of the agency relating to the program; and

“(II) the oversight or financial controls to identify and prevent improper payments under the program; and

“(ii) submit to Congress recommendations, which may be included in another report submitted by the Inspector General to Congress, for modifying any plans of the agency relating to the program, including improvements for improper payments determination and estimation methodology.”;

(3) in subsection (d) (as redesignated by paragraph (1) of this subsection), by striking “subsection (b)” each place that term appears and inserting “subsection (c)”;

(4) in subsection (e) (as redesignated by paragraph (1) of this subsection), by striking “subsection (b)” and inserting “subsection (c)”; and

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

(b) IMPROVED ESTIMATES.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall provide guidance to agencies for improving the estimates of improper payments under the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note).

(2) GUIDANCE.—Guidance under this subsection shall—

(A) strengthen the estimation process of agencies by setting standards for agencies to follow in determining the underlying validity of sampled payments to ensure amounts being billed, paid, or obligated for payment are proper;

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

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

(D) require agencies to include all identified improper payments in the reported estimate, regardless of whether the improper payment in question has been or is being recovered;

(E) include payments to employees, including salary, locality pay, travel pay, purchase card use, and other employee payments, as subject to risk assessment and, where appropriate, improper payment estimation; and

(F) require agencies to tailor their corrective actions for the high-priority programs identified under section 2(b)(1)(A) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) to better reflect the unique processes, procedures, and risks involved in each specific program.

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

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

(2) in section 3(a)—

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

(B) in paragraph (3)—

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

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

SEC. 4. IMPROPER PAYMENTS INFORMATION.

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

SEC. 5. DO NOT PAY INITIATIVE.

(a) PREPAYMENT AND PREAWARD PROCEDURES.—

(1) IN GENERAL.—Each agency shall review prepayment and preaward procedures and ensure that a thorough review of available databases with relevant information on eligibility occurs to determine program or award eligibility and prevent improper payments before the release of any Federal funds.

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

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

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

(C) The Debt Check Database of the Department of the Treasury.

(D) The Credit Alert System or Credit Alert Interactive Voice Response System of the Department of Housing and Urban Development.

(E) The List of Excluded Individuals/Entities of the Office of Inspector General of the Department of Health and Human Services.

(b) DO NOT PAY INITIATIVE.—

- (1) ESTABLISHMENT.—There is established the Do Not Pay Initiative which shall include—
- (A) use of the databases described under subsection (a)(2); and
 - (B) use of other databases designated by the Director of the Office of Management and Budget in consultation with agencies and in accordance with paragraph (2).
- (2) OTHER DATABASES.—In making designations of other databases under paragraph (1)(B), the Director of the Office of Management and Budget shall—
- (A) consider any database that substantially assists in preventing improper payments; and
 - (B) provide public notice and an opportunity for comment before designating a database under paragraph (1)(B).
- (3) ACCESS AND REVIEW BY AGENCIES.—For purposes of identifying and preventing improper payments, each agency shall have access to, and use of, the Do Not Pay Initiative to verify payment or award eligibility in accordance with subsection (a) when the Director of the Office of Management and Budget determines the Do Not Pay Initiative is appropriately established for the agency.
- (4) PAYMENT OTHERWISE REQUIRED.—When using the Do Not Pay Initiative, an agency shall recognize that there may be circumstances under which the law requires a payment or award to be made to a recipient, regardless of whether that recipient is identified as potentially ineligible under the Do Not Pay Initiative.
- (5) ANNUAL REPORT.—The Director of the Office of Management and Budget shall submit to Congress an annual report, which may be included as part of another report submitted to Congress by the Director, regarding the operation of the Do Not Pay Initiative, which shall—
- (A) include an evaluation of whether the Do Not Pay Initiative has reduced improper payments or improper awards; and
 - (B) provide the frequency of corrections or identification of incorrect information.
- (c) DATABASE INTEGRATION PLAN.—Not later than 60 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall provide to the Congress a plan for—
- (1) inclusion of other databases on the Do Not Pay Initiative;
 - (2) to the extent permitted by law, agency access to the Do Not Pay Initiative; and
 - (3) the data use agreements described under subsection (e)(2)(D).
- (d) INITIAL WORKING SYSTEM.—
- (1) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall establish a working system for prepayment and preaward review that includes the Do Not Pay Initiative as described under this section.
 - (2) WORKING SYSTEM.—The working system established under paragraph (1)—
 - (A) may be located within an appropriate agency;
 - (B) shall include not less than 3 agencies as users of the system; and
 - (C) shall include investigation activities for fraud and systemic improper payments detection through analytic technologies and other techniques, which may include commercial database use or access.
 - (3) APPLICATION TO ALL AGENCIES.—Not later than June 1, 2013, each agency shall review all payments and awards for all programs of that agency through the system established under this subsection.
- (e) FACILITATING DATA ACCESS BY FEDERAL AGENCIES AND OFFICES OF INSPECTORS GENERAL FOR PURPOSES OF PROGRAM INTEGRITY.—
- (1) DEFINITION.—In this subsection, the term “Inspector General” means any Inspector General described in subparagraph (A), (B), or (I) of section 11(b)(1) of the Inspector General Act of 1978 (5 U.S.C. App.) and any successor Inspector General.
 - (2) COMPUTER MATCHING BY FEDERAL AGENCIES FOR PURPOSES OF INVESTIGATION AND PREVENTION OF IMPROPER PAYMENTS AND FRAUD.—
 - (A) IN GENERAL.—Except as provided in this paragraph, in accordance with section 552a of title 5, United States Code (commonly known as the Privacy Act of 1974), each Inspector General and the head of each agency may enter into computer matching agreements with other inspectors general and agency heads that allow ongoing data matching (which shall include automated data matching) in order to assist in the detection and prevention of improper payments.
 - (B) REVIEW.—Not later than 60 days after a proposal for an agreement under subparagraph (A) has been presented to a Data Integrity Board es-

tablished under section 552a(u) of title 5, United States Code, for consideration, the Data Integrity Board shall respond to the proposal.

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

- (i) shall have a termination date of less than 3 years; and
- (ii) during the 3-month period ending on the date on which the agreement is scheduled to terminate, may be renewed by the agencies entering the agreement for not more than 3 years.

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

(E) COST-BENEFIT ANALYSIS.—A justification under section 552a(o)(1)(B) of title 5, United States Code, relating to an agreement under subparagraph (A) is not required to contain a specific estimate of any savings under the computer matching agreement.

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

(A) issue guidance for agencies regarding implementing this subsection, which shall include standards for—

- (i) reimbursement of costs, when necessary, between agencies;
- (ii) retention and timely destruction of records in accordance with section 552a(o)(1)(F) of title 5, United States Code; and
- (iii) prohibiting duplication and redisclosure of records in accordance with section 552a(o)(1)(H) of title 5, United States Code;

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

- (i) improve the effectiveness and responsiveness of the Data Integrity Boards;
- (ii) ensure privacy protections in accordance with section 552a of title 5, United States Code (commonly known as the Privacy Act of 1974); and
- (iii) establish standard matching agreements for use when appropriate; and

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

(4) CORRECTIONS.—The Director of the Office of Management and Budget shall establish procedures providing for the correction of data in order to ensure—

- (A) compliance with section 552a(p) of title 5, United States Code; and
- (B) that corrections are made in any Do Not Pay Initiative database and in any relevant source databases designated by the Director of the Office of Management and Budget under subsection (b)(1).

(5) COMPLIANCE.—The head of each agency, in consultation with the Inspector General of the agency, shall ensure that any information provided to an individual or entity under this subsection is provided in accordance with protocols established under this subsection.

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

(f) DEVELOPMENT AND ACCESS TO A DATABASE OF INCARCERATED INDIVIDUALS.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall submit to Congress recommendations for increasing the use of, access to, and the technical feasibility of using data on the Federal, State, and local conviction and incarceration status of individuals for purposes of identifying and preventing improper payments by Federal agencies and programs and fraud.

(g) PLAN TO CURB FEDERAL IMPROPER PAYMENTS TO DECEASED INDIVIDUALS BY IMPROVING THE QUALITY AND USE BY FEDERAL AGENCIES OF THE SOCIAL SECURITY ADMINISTRATION DEATH MASTER FILE.—

(1) **ESTABLISHMENT.**—In conjunction with the Commissioner of Social Security and in consultation with relevant stakeholders that have an interest in or responsibility for providing the data, and the States, the Director of the Office of Management and Budget shall establish a plan for improving the quality, accuracy, and timeliness of death data maintained by the Social Security Administration, including death information reported to the Commissioner under section 205(r) of the Social Security Act (42 U.S.C. 405(r)).

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

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

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

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

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

(E) address improper payments made by agencies to deceased individuals as part of Federal retirement programs.

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

SEC. 6. IMPROVING RECOVERY OF IMPROPER PAYMENTS.

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

(b) **REVIEW.**—The Director of the Office of Management and Budget shall determine—

(1) current and historical rates and amounts of recovery of improper payments (or, in cases in which improper payments are identified solely on the basis of a sample, recovery rates and amounts estimated on the basis of the applicable sample), including a list of agency recovery audit contract programs and specific information of amounts and payments recovered by recovery audit contractors; and

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

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

Improper payments are “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.”¹ They are the most visible and tangible byproduct of poor Federal financial management. Programs are particularly vulnerable to improper payments when agencies fail to maintain effective internal controls, adequate financial management systems, or sufficient oversight.

H.R. 4053, the Improper Payments Elimination and Recovery Improvement Act of 2012, was introduced on February 16, 2012, by Representative Edolphus Towns (D-NY) and referred to the Committee on Oversight and Government Reform. The bill expands requirements for Federal agencies to identify, prevent and recover improper payments. It requires the Office of Management and Budget (OMB) to identify and report on Federal programs at high risk for improper payments and create a standardized methodology for estimating improper payments, in order to achieve consistent reporting across the government. The bill modifies the Privacy Act of 1974 to allow for multilateral data sharing between agencies,

¹ 31 U.S.C. 3321 note.

and mandates a government-wide “Do Not Pay Initiative” to require prepayment and contract award screening against databases containing relevant payee eligibility information. It also requires OMB to determine a plan for curbing improper payments to deceased individuals.

BACKGROUND AND NEED FOR LEGISLATION

Waste and abuse of taxpayer dollars is a severe problem. Federal agencies made an estimated \$115.3 billion in improper payments in FY 2011.² Improper payments constituted nearly 5 percent of the \$2.5 trillion in program spending in fiscal year 2011.³ To better address this problem, agencies must take advantage of new technologies and data sharing capabilities. H.R. 4053 brings improper payment detection and prevention into the 21st century by encouraging the use of technology to allow agencies to easily share data to achieve increased payment accuracy and accountability. The provisions in H.R. 4053 build upon the Improper Payments and Elimination Recovery Act of 2010, which expanded reporting frequency and established methodologies for estimating the risk of improper payments.

The full Committee and the Subcommittee on Government Organization, Efficiency and Financial Management held a series of hearings this Congress on the issuance of improper payments. The hearings included testimony from leaders at OMB, the Government Accountability Office (GAO), the Department of Health and Human Services (HHS) and several policy experts about the challenge of preventing improper payments. On February 17, 2011, the full Committee examined the issue of Federal misspending during a hearing entitled, “Waste and Abuse: The Refuse of the Federal Spending Binge.”

On April 15, 2011, the Subcommittee on Government Organization, Efficiency and Financial Management heard from agency officials from GAO and OMB about agency internal controls and common sense solutions to tighten Federal financial management, including the use of advanced information technology to prevent wasteful spending.

A July 28, 2011, hearing of the Subcommittee focused on the Federal program with the highest volume of improper payments—Medicare. The Committee learned that Medicare funds are often paid to ineligible recipients, a problem that can be prevented via the use of data-matching technology.

On February 7, 2012, the Subcommittee heard from agency experts from OMB, GAO and the Recovery Accountability and Transparency Board at a hearing entitled, “Solutions Needed: Improper Payments Total \$115 Billion in Federal Misspending.” The Subcommittee discussed the Administration’s recent efforts to reduce improper payments, and suggestions for effective strategies to reduce improper payments.

H.R. 4053 reflects the lessons learned from these hearings and the Committee’s ongoing oversight into Federal financial management.

² GAO, “Improper Payments: Remaining Challenges and Strategies for Governmentwide Reduction Efforts,” *GAO-12-573T*, March 28, 2012.

³ *Ibid.*

LEGISLATIVE HISTORY

H.R. 4053 builds on prior legislation to reduce and prevent improper payments. A decade ago, the Improper Payments Information Act of 2002 was signed into law (P.L. 107-300), compelling agencies to identify payment errors in specific programs. That 2002 law was updated in 2010 by the Improper Payments and Elimination Recovery Act (P.L. 111-204), which required better identification and estimation of improper payments.

H.R. 4053 was introduced by Representative Towns on February 16, 2012. The bill was referred to the Oversight and Government Reform Committee. A companion bill, S. 1409, was introduced by Senator Carper on July 22, 2011. S. 1409 was referred to the Senate Homeland Security and Governmental Affairs Committee, and subsequently reported favorably with an amendment in the nature of a substitute on October 19, 2011. It was then placed on the Senate Legislative Calendar on July 12, 2012, and passed under Unanimous Consent on August 1, 2012.

SECTION-BY-SECTION

Section 1. Short title

This section titles the bill as the “Improper Payments Elimination and Recovery Improvement Act of 2012”.

Section 2. Definitions

This section defines the terms “agency”, “improper payment” and “State” for purposes of the Act.

Section 3. Improving the determination of improper payments by federal agencies

Subsection (a) requires the OMB Director to annually identify high-priority programs, and to establish annual targets, and intermediate actions to achieve the targets, for reducing improper payments. Agencies are required to report annually to their Inspectors General and make available to the public a report on any high-dollar improper payments identified by the agency. These reports are to be made accessible by OMB on a central, publicly available website. The Inspector General of each agency is to review the quality and the risk level associated with the programs.

Subsection (b) requires the OMB Director to provide guidance to Federal agencies for improving agency estimates of improper payments not later than 180 days after enactment. This requirement strengthens the estimation process by having OMB set standards to ensure the underlying validity of sampled payments.

Subsection (c) makes technical and conforming amendments to IPERA.

Section 4. Improper payments information

This section makes a technical correction to IPERA in conformance with OMB guidance.

Section 5. Do Not Pay Initiative

Subsection (a) requires agencies to conduct prepayment procedures, including screening against databases containing relevant

information on payees, to verify eligibility and prevent improper payments.

Subsection (b) requires OMB to establish a Do Not Pay Initiative comprised of the databases used by agencies in subsection (a), and other databases as designated by the OMB Director. This subsection also requires that OMB evaluate the Do Not Pay Initiative in an annual report to Congress.

Subsection (c) requires that within 60 days of enactment, the OMB Director provide Congress with a plan for including other databases in the Do Not Pay Initiative, establishing lawful agency access to the databases, and creating a multilateral data use agreement setting parameters for database access between relevant agencies.

Subsection (d) requires OMB to establish a prepayment review system that includes the initial Do Not Pay Initiative system within 90 days of enactment. The initial system may be located within an appropriate agency, shall include at least three participating agencies, and must include investigative activities for fraud and systemic improper payment detection through analytic technologies. Each agency is required to review all of its payments and awards through the Do Not Pay Initiative no later than June 1, 2013.

Subsection (e) requires that within 60 days of enactment, OMB establish a plan for executing multilateral data use agreements for the Do Not Pay Initiative. The subsection amends the Privacy Act to allow for the multilateral data use agreements between and among Federal agencies. The subsection requires multilateral data use agreements to include regulations and guidelines that ensure data access, as well as transfer and storage of data in a manner consistent with relevant privacy, security, and disclosure laws.

Subsection (f) requires that within one year of enactment, the Attorney General submit to Congress recommendations for using Federal, State, and local conviction and incarceration databases to determine the incarceration status of individuals, in order to prevent improper payments.

Subsection (g) requires the OMB Director, in consultation with stakeholders, States, and the Social Security Administrator, to establish a plan for improving the quality and timeliness of death data maintained by the Social Security Administration. The plan must include actions to increase the quality and frequency of access by agencies, including a goal of at least once-daily access. Within 120 days of enactment, the OMB Director must report to Congress on the plan.

Section 6. Improving recovery of improper payments

Subsection (a) requires the OMB Director to determine current and historical rates and amounts of improper payment recovery by audit contractors, and identify numerical or percentage targets for recovering improper payments.

EXPLANATION OF AMENDMENTS

The Section-by-Section above is a summary explanation of the provisions of Chairman Issa's amendment in the nature of a substitute (ANS), which was adopted during the Committee Business Meeting.

COMMITTEE CONSIDERATION

On September 20, 2012, the Committee met in open session and ordered reported favorably the bill, H.R. 4053, as amended, by roll unanimous consent, a quorum being present.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill expands requirements for Federal agencies to identify, prevent and recover improper payments. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF
THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 4053 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 4053. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the

Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST
ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 4053 from the Director of the Congressional Budget Office:

OCTOBER 11, 2012.

Hon. DARRELL ISSA,
Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4053, the Improper Payments Elimination and Recovery Improvement Act of 2012.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 4053—Improper Payments Elimination and Recovery Improvement Act of 2012

H.R. 4053 would amend federal law to require agencies to make additional efforts to identify, recover, and prevent improper payments. Improper federal payments include several kinds of erroneous disbursements, such as overpayments, underpayments, payments that were not adequately documented, and fraudulent payments. Under the legislation, the Office of Management and Budget (OMB), federal agencies, and their inspector generals would have additional responsibilities to better manage payment practices and reduce the incidence of improper payments. In addition, H.R. 4053 would make changes to the data-sharing protocols among federal agencies to facilitate the identification of improper payments.

CBO estimates that implementing H.R. 4053 would have no significant cost over the next five years. The bill could affect direct spending by agencies not funded through annual appropriations; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would not be significant. Enacting H.R. 4053 would not affect revenues.

Most of the provisions of the bill would codify and expand current practices of the federal government. Executive Order 13520 and various Presidential memorandums have directed OMB and agencies to take steps to reduce improper payments. OMB has already drafted guidance on improper payments and created a Do-Not-Pay list. Consequently, CBO estimates that the additional responsibilities and reporting requirements to implement this bill would neither significantly increase administrative costs to federal agencies nor generate any significant incremental savings.

H.R. 4053 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On April 20, 2012, CBO transmitted a cost estimate for S. 1409, the Improper Payments and Recovery Improvement Act of 2011, as ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on October 19, 2011. Both pieces of legislation address improper payments but have different provisions. The Senate bill includes a requirement for agencies to operate Recovery Audit Contracting programs, but that provision is not included in H.R. 4053.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

IMPROPER PAYMENTS INFORMATION ACT OF 2002

* * * * *

SEC. 2. ESTIMATES OF IMPROPER PAYMENTS AND REPORTS ON ACTIONS TO REDUCE THEM.

(a) IDENTIFICATION OF SUSCEPTIBLE PROGRAMS AND ACTIVITIES.—

(1) * * *

* * * * *

(3) RISK ASSESSMENTS.—

(A) DEFINITION.—In this subsection the term “significant” means—

(i) * * *

(ii) [with respect to fiscal years following September 30th of a fiscal year beginning before fiscal year 2013 as determined by the Office of Management and Budget] *with respect to fiscal year 2014 and each fiscal year thereafter*, that improper payments in the program or activity in the preceding fiscal year may have exceeded—

(I) * * *

* * * * *

(b) IMPROVING THE DETERMINATION OF IMPROPER PAYMENTS.—

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

(A) *identify a list of high-priority Federal programs for greater levels of oversight and review—*

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

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

(B) *in coordination with the agency responsible for administering the high-priority program, establish annual*

targets and semi-annual or quarterly actions for reducing improper payments associated with each high-priority program.

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

(A) IN GENERAL.—*Subject to Federal privacy policies and to the extent permitted by law, each agency with a program identified under paragraph (1)(A) on an annual basis shall submit to the Inspector General of that agency, and make available to the public (including availability through the Internet), a report on that program.*

(B) CONTENTS.—*Each report under this paragraph—*
(i) shall describe—

(I) any action the agency—

(aa) has taken or plans to take to recover improper payments; and

(bb) intends to take to prevent future improper payments; and

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

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

(D) AVAILABILITY OF INFORMATION TO INSPECTOR GENERAL.—*Subparagraph (B)(ii) shall not prohibit any referral or information being made available to an Inspector General as otherwise provided by law.*

(E) ASSESSMENT AND RECOMMENDATIONS.—*The Inspector General of each agency that submits a report under this paragraph shall, for each program of the agency that is identified under paragraph (1)(A)—*

(i) review—

(I) the assessment of the level of risk associated with the program, and the quality of the improper payment estimates and methodology of the agency relating to the program; and

(II) the oversight or financial controls to identify and prevent improper payments under the program; and

(ii) submit to Congress recommendations, which may be included in another report submitted by the Inspector General to Congress, for modifying any plans of the agency relating to the program, including improvements for improper payments determination and estimation methodology.

[(b)] (c) ESTIMATION OF IMPROPER PAYMENTS.—*With respect to each program and activity identified under subsection (a), the head of the relevant agency shall—*

(1) * * *

* * * * *

[(c)] (d) REPORTS ON ACTIONS TO REDUCE IMPROPER PAYMENTS.—*With respect to any program or activity of an agency with estimated improper payments under [subsection (b)] subsection (c),*

the head of the agency shall provide with the estimate under [subsection (b)] *subsection (c)* a report on what actions the agency is taking to reduce improper payments, including—

(1) * * *

* * * * *

[(d)] (e) REPORTS ON ACTIONS TO RECOVER IMPROPER PAYMENTS.—With respect to any improper payments identified in recovery audits conducted under section 2(h) of the Improper Payments Elimination and Recovery Act of 2010 (31 U.S.C. 3321 note), the head of the agency shall provide with the estimate under [subsection (b)] *subsection (c)* a report on all actions the agency is taking to recover improper payments, including—

(1) * * *

* * * * *

[(e)] (f) GOVERNMENTWIDE REPORTING OF IMPROPER PAYMENTS AND ACTIONS TO RECOVER IMPROPER PAYMENTS.—

(1) * * *

* * * * *

[(f)] (g) DEFINITIONS.—In this section:

(1) * * *

* * * * *

(3) PAYMENT.—The term “payment” means any transfer or commitment for future transfer of Federal funds such as cash, securities, loans, loan guarantees, and insurance subsidies to any non-Federal person or entity or a *Federal employee*, that is made by a Federal agency, a Federal contractor, a Federal grantee, or a governmental or other organization administering a Federal program or activity.

* * * * *

[(g)] (h) GUIDANCE BY THE OFFICE OF MANAGEMENT AND BUDGET.—

(1) * * *

* * * * *

IMPROPER PAYMENTS ELIMINATION AND RECOVERY ACT OF 2010

* * * * *

SEC. 2. IMPROPER PAYMENTS ELIMINATION AND RECOVERY.

(a) * * *

* * * * *

(h) RECOVERY AUDITS.—

(1) DEFINITION.—In this subsection, the term “agency” has the meaning given under [section 2(f) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) as redesignated by this Act.] *section 2(g) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note)*.

* * * * *

SEC. 3. COMPLIANCE.

(a) DEFINITIONS.—In this section:

(1) AGENCY.—The term “agency” has the meaning given under [section 2(f) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) as redesignated by this Act.] *section 2(g) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note).*

* * * * *

(3) COMPLIANCE.—The term “compliance” means that the agency—

(A) * * *

* * * * *

(C) if required, publishes improper payments estimates for all programs and activities identified under [section 2(b)] *section 2(c)* of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) in the accompanying materials to the annual financial statement;

(D) publishes programmatic corrective action plans prepared under [section 2(c)] *section 2(d)* of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) that the agency may have in the accompanying materials to the annual financial statement;

(E) publishes improper payments reduction targets established under [section 2(c)] *section 2(d)* of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) that the agency may have in the accompanying materials to the annual financial statement for each program assessed to be at risk, and is meeting such targets; and

(F) has reported an improper payment rate of less than 10 percent for each program and activity for which an estimate was published under [section 2(b)] *section 2(c)* of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note).

* * * * *

