

110TH CONGRESS
2D SESSION

H. R. 5467

To amend the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) in order to prevent the loss of billions in taxpayer dollars.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2008

Mr. PATRICK J. MURPHY of Pennsylvania (for himself and Mr. BILBRAY) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To amend the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) in order to prevent the loss of billions in taxpayer dollars.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Improper Payments
5 Elimination and Recovery Act of 2008”.

6 **SEC. 2. IMPROPER PAYMENTS ELIMINATION AND RECOV-**
7 **ERY.**

8 (a) SUSCEPTIBLE PROGRAMS AND ACTIVITIES.—Sec-
9 tion 2 of the Improper Payments Information Act of 2002

1 (31 U.S.C. 3321 note) is amended by striking subsection
2 (a) and inserting the following:

3 “(a) IDENTIFICATION OF SUSCEPTIBLE PROGRAMS
4 AND ACTIVITIES.—

5 “(1) IN GENERAL.—The head of each agency
6 shall, in accordance with guidance prescribed by the
7 Director of the Office of Management and Budget,
8 annually review all programs and activities that the
9 relevant agency head administers and identify all
10 such programs and activities that may be susceptible
11 to significant improper payments.

12 “(2) ANNUAL RISK ASSESSMENT.—

13 “(A) DEFINITION.—In this paragraph the
14 term ‘significant’ means that improper pay-
15 ments in the program or activity in the pre-
16 ceding fiscal year exceeded—

17 “(i) 2.5 percent of all program or ac-
18 tivity payments made during that fiscal
19 year; or

20 “(ii) \$10,000,000.

21 “(B) RISK ASSESSMENT.—The review
22 under paragraph (1) shall include a risk assess-
23 ment that includes—

24 “(i) a systematic process for pro-
25 ducing a statistically valid estimate of the

1 level of improper payments being made by
2 the agency; and
3 “(ii) an identification of the factors
4 contributing to each assessment under
5 clause (i).”.

6 (b) REPORTS ON ACTIONS TO REDUCE IMPROPER
7 PAYMENTS.—Section 2 of the Improper Payments Infor-
8 mation Act of 2002 (31 U.S.C. 3321 note) is amended
9 by striking subsection (c) and inserting the following:

10 “(c) REPORTS ON ACTIONS TO REDUCE IMPROPER
11 PAYMENTS.—With respect to any program or activity of
12 an agency with estimated improper payments under sub-
13 section (b), the head of the agency shall provide with the
14 estimate under subsection (b) a report on what actions
15 the agency is taking to reduce any improper payments,
16 including—

17 “(1) a description of the causes of the improper
18 payments identified, actions planned or taken to cor-
19 rect those causes, and the planned or actual comple-
20 tion date of the actions taken to address those
21 causes;

22 “(2) in order to reduce improper payments to
23 a level below which further expenditures to reduce
24 improper payments would cost more than the
25 amount such expenditures would save in prevented

1 or recovered improper payments, a statement of
2 whether the agency has what is needed with respect
3 to—

4 “(A) the internal controls, including infor-
5 mation systems;

6 “(B) the human capital; and

7 “(C) other infrastructure;

8 “(3) if the agency does not have sufficient in-
9 ternal controls under paragraph (2)(A), a descrip-
10 tion of the resources the agency has requested in its
11 budget submission to establish such internal con-
12 trols;

13 “(4) a description of the steps the agency has
14 taken to ensure that agency managers are held ac-
15 countable for establishing sufficient internal con-
16 trols, including an appropriate control environment,
17 that prevent improper payments from occurring and
18 promptly detect and recover improper payments
19 made; and

20 “(5) a statement of whether or not the agency
21 has—

22 “(A) developed and implemented improper
23 payment control plans; and

1 “(B) implemented appropriate improper
2 payment detection, investigation, reporting, and
3 data collection procedures and processes.”.

4 (c) REPORTS ON RECOVERY ACTIONS AND GOVERN-
5 MENTWIDE REPORTING.—

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

9 (A) by striking subsection (e);

10 (B) by redesignating subsections (d) and
11 (f) as subsections (f) and (g), respectively; and

12 (C) by inserting after subsection (c) the
13 following:

14 “(d) REPORTS ON ACTIONS TO RECOVER IMPROPER
15 PAYMENTS.—With respect to any improper payments
16 identified in recovery audits conducted under section 2(g)
17 of the Improper Payments Elimination and Recovery Act
18 of 2008, the head of the agency shall provide with the
19 estimate under subsection (b) a report on what actions
20 the agency is taking to recover improper payments, includ-
21 ing—

22 “(1) the types of errors from which improper
23 payments resulted;

24 “(2) a discussion of the methods used by the
25 agency to recover improper payments;

1 “(3) the amounts recovered, outstanding, and
2 determined to not be collectable, including the per-
3 cent these amounts represent of the total improper
4 payments of the agency; and

5 “(4) an aging schedule of the amounts out-
6 standing.

7 “(e) GOVERNMENTWIDE REPORTING OF IMPROPER
8 PAYMENTS.—

9 “(1) DEPARTMENT OF THE TREASURY.—The
10 Secretary of the Treasury shall include in each re-
11 port submitted under section 331(a) of title 31,
12 United States Code, the improper payment informa-
13 tion reported by the agencies on a governmentwide
14 basis.

15 “(2) OFFICE OF MANAGEMENT AND BUDGET.—
16 The Director of the Office of Management and
17 Budget shall—

18 “(A) coordinate with the Secretary of the
19 Treasury in the preparation of the information
20 to be reported under paragraph (1); and

21 “(B) prescribe regulations for—

22 “(i) the information required to be re-
23 ported; and

1 “(ii) a format of reporting such infor-
2 mation on a governmentwide basis to be
3 used by agencies.”.

4 (2) TECHNICAL AND CONFORMING AMEND-
5 MENT.—Section 331(a) of title 31, United States
6 Code, is amended—

7 (A) in paragraph (6), by striking “and”
8 after the semicolon;

9 (B) in paragraph (7), by striking the pe-
10 riod and inserting “; and”; and

11 (C) by adding at the end the following:

12 “(8) the improper payments information re-
13 quired under section 2(e) of the Improper Payments
14 Information Act of 2002 (31 U.S.C. 3321 note).”.

15 (d) DEFINITIONS.—Section 2 of the Improper Pay-
16 ment Information Act of 2002 (31 U.S.C. 3321 note) is
17 amended by striking subsections (f) (as redesignated by
18 this section) and inserting the following:

19 “(f) DEFINITIONS.—In this section:

20 “(1) AGENCY.—The term ‘agency’ means an
21 executive agency, as that term is defined in section
22 102 of title 31, United States Code.

23 “(2) IMPROPER PAYMENT.—The term ‘im-
24 proper payment’—

1 “(A) means any payment that should not
2 have been made or that was made in an incor-
3 rect amount (including overpayments and un-
4 derpayments) under statutory, contractual, ad-
5 ministrative, or other legally applicable require-
6 ments; and

7 “(B) includes any payment to an ineligible
8 recipient, any payment for an ineligible good or
9 service, any duplicate payment, payments for
10 services not received, and any payment that
11 does not account for credit for applicable dis-
12 counts.

13 “(3) PAYMENT.—The term ‘payment’ means
14 any transfer or commitment for future transfer of
15 cash, in-kind benefits, goods, services, loans and loan
16 guarantees, insurance subsidies, and other items of
17 value between Federal agencies and their employees,
18 vendors, partners, and beneficiaries, and parties to
19 contracts, grants, leases, cooperative agreements, or
20 any other procurement mechanism, that is—

21 “(A) made by a Federal agency, a Federal
22 contractor, or a governmental or other organi-
23 zation administering a Federal program or ac-
24 tivity; and

1 “(B) derived from Federal funds or other
2 Federal resources or that will be reimbursed
3 from Federal funds or other Federal resources.

4 “(4) PAYMENT FOR AN INELIGIBLE GOOD OR
5 SERVICE.—The term ‘payment for an ineligible good
6 or service’ shall include a payment for any good or
7 service that is in violation of any provision of any
8 contract, grant, lease, cooperative agreement, or any
9 other procurement mechanism, including any provi-
10 sion relating to quantity, quality, or timeliness.”.

11 (e) GUIDANCE BY THE OFFICE OF MANAGEMENT
12 AND BUDGET.—Section 2 of the Improper Payments In-
13 formation Act of 2002 (31 U.S.C. 3321 note) is amended
14 by striking subsection (g) (as redesignated by this section)
15 and inserting the following:

16 “(g) GUIDANCE BY THE OFFICE OF MANAGEMENT
17 AND BUDGET.—

18 “(1) IN GENERAL.—Not later than 6 months
19 after the date of enactment of the Improper Pay-
20 ments Elimination and Recovery Act of 2008, the
21 Director of the Office of Management and Budget
22 shall prescribe updated guidance to implement and
23 provide for full compliance with the requirements of
24 this section. The guidance shall not include any ex-
25 emptions not specifically authorized by this section.

1 “(2) CONTENTS.—The updated guidance under
2 paragraph (1) shall prescribe—

3 “(A) the form of the reports on actions to
4 reduce improper payments, recovery actions,
5 and governmentwide reporting; and

6 “(B) strategies for addressing risks and
7 establishing appropriate prepayment and
8 postpayment internal controls.”.

9 (f) INTERNAL CONTROLS.—

10 (1) REPORT ON EFFECTIVENESS OF A–123 IM-
11 PLEMENTATION.—The President’s Council on Integ-
12 rity and Efficiency shall conduct a study of the ef-
13 fectiveness of implementation of the Office of Man-
14 agement and Budget’s Circular No. A–123 (revised),
15 Management’s Responsibility for Internal Control at
16 preventing improper payments or addressing internal
17 control problems that contribute to improper pay-
18 ments, and not later than 1 year after the date of
19 enactment of this Act, submit a report on the study
20 to—

21 (A) the Committee on Homeland Security
22 and Governmental Affairs of the Senate;

23 (B) the Committee on Oversight and Gov-
24 ernment Reform of the House of Representa-
25 tives;

1 (C) the Director of the Office of Manage-
2 ment and Budget; and

3 (D) the Comptroller General.

4 (2) CONSULTATION AND COOPERATION.—The
5 President’s Council on Integrity and Efficiency shall
6 consult and cooperate with the committees and di-
7 rector described under paragraph (1) to ensure the
8 nature and scope of the study under paragraph (1)
9 will address the needs on those committees and the
10 Director of the Office of Management and Budget,
11 including how the implementation of Circular No.
12 A–123 (revised) has helped to identify, report, pre-
13 vent, and recover improper payments.

14 (3) DETERMINATION OF AGENCY READINESS
15 FOR OPINION ON INTERNAL CONTROL.—Not later
16 than 1 year after the date of enactment of the Im-
17 proper Payments Elimination and Recovery Act of
18 2008, the Director of the Office of Management and
19 Budget shall develop—

20 (A) specific criteria as to when an agency
21 should initially be required to obtain an opinion
22 on internal control over financial reporting; and

23 (B) criteria for an agency that has dem-
24 onstrated a stabilized, effective system of inter-
25 nal control over financial reporting, whereby the

1 agency would qualify for a multiyear cycle for
2 obtaining an audit opinion on internal control
3 over financial reporting, rather than an annual
4 cycle.

5 (g) RECOVERY AUDITS.—An agency with outlays of
6 \$1,000,000 or more in any fiscal year shall conduct a re-
7 covery audit (as that term is defined by the Director of
8 the Office of Management and Budget under section 3561
9 of title 31, United States Code) of all programs and activi-
10 ties, if the agency determines that a prior audit has identi-
11 fied improper payments that can be recouped and it is cost
12 beneficial for a recovery activity to recapture those funds.

13 (h) REPORT ON RECOVERY AUDITING.—Not earlier
14 than 1 year after the date of the enactment of this Act,
15 the Chief Financial Officers Council established under sec-
16 tion 302 of the Chief Financial Officers Act of 1990 (31
17 U.S.C. 901 note) and the President’s Council on Integrity
18 and Efficiency established under Executive Order 12805
19 of May 11, 1992, in consultation with recovery audit ex-
20 perts, shall—

21 (1) jointly conduct a study of the costs and
22 benefits of agency recovery audit activities, including
23 those under subsection (g), and including the effec-
24 tiveness of using the services of—

25 (A) private contractors;

- 1 (B) agency employees;
- 2 (C) cross-servicing from other agencies; or
- 3 (D) any combination of the provision of
- 4 services described under subparagraphs (A)
- 5 through (C); and

6 (2) submit a report on the results of the study
7 to—

8 (A) the Committee on Homeland Security
9 and Governmental Affairs of the Senate;

10 (B) the Committee on Oversight and Gov-
11 ernment Reform of the House of Representa-
12 tives; and

13 (C) the Comptroller General.

14 **SEC. 3. COMPLIANCE.**

15 (a) DEFINITIONS.—In this section:

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

20 (2) COMPLIANCE.—The term “compliance”
21 means that the agency—

22 (A) has published a performance report for
23 the most recent fiscal year and posted that re-
24 port on the agency website;

1 (B) has conducted a program specific risk
2 assessment for each program or activity that—

3 (i) is in compliance with section 2(a)
4 the Improper Payments Information Act of
5 2002 (31 U.S.C. 3321 note); and

6 (ii) is included in the performance re-
7 port;

8 (C) publishes program specific improper
9 payments estimates for all programs and activi-
10 ties identified under section 2(b) of the Im-
11 proper Payments Information Act of 2002 (31
12 U.S.C. 3321 note) in the performance report;

13 (D) publishes programmatic corrective ac-
14 tion plans prepared under section 2(c) of the
15 Improper Payments Information Act of 2002
16 (31 U.S.C. 3321 note) that the agency may
17 have in the performance report;

18 (E) publishes Office of Management and
19 Budget approved improper payments reduction
20 targets in the performance report for each pro-
21 gram assessed to be at risk, and is determined
22 by the Office of Management and Budget to be
23 actively meeting such targets; and

24 (F) publishes the compliance report under
25 subsection (c) in the performance report.

1 (3) DELINQUENT PROGRAM.—The term “delin-
2 quent program” means a program which is partially
3 or wholly responsible for the determination of an
4 agency being not in compliance.

5 (4) PERFORMANCE REPORT.—The term “per-
6 formance report” means the performance and ac-
7 countability report referred to under section 3516(b)
8 of title 31, United States Code, or a program per-
9 formance report under section 1116 of that title.

10 (b) ANNUAL COMPLIANCE REPORT BY OMB.—

11 (1) IN GENERAL.—Each year, the Director of
12 the Office of Management and Budget shall prepare
13 a report with an identification of—

14 (A) the compliance status of each agency
15 under this section; and

16 (B) the delinquent programs responsible
17 for that status.

18 (2) INCLUSION IN BUDGET SUBMISSION.—The
19 Director of Office of the Management and Budget
20 shall include the report described under paragraph
21 (1) in the annual budget submitted under section
22 1105 of title 31, United States Code.

23 (c) ANNUAL COMPLIANCE REPORT BY AGENCY IN-
24 SPECTORS GENERAL.—

1 (1) IN GENERAL.—Each fiscal year, the Inspec-
2 tor General of each agency shall determine whether
3 the agency is in compliance with the Improper Pay-
4 ments Information Act of 2002 (31 U.S.C. 3321
5 note) and this Act and submit a report to the head
6 of the agency on that determination.

7 (2) PREPARATION OF REPORT.—The Inspector
8 General of each agency may enter into contracts and
9 other arrangements with public agencies and with
10 private persons for the preparation of financial
11 statements, studies, analyses, and other services in
12 preparing the report described under paragraph (1).

13 (3) INCLUSION IN PERFORMANCE REPORT.—
14 The head of each agency shall include the report of
15 the agency Inspector General described under para-
16 graph (1) in the performance report.

17 (d) REMEDIATION ASSISTANCE.—

18 (1) VOLUNTARY REMEDIATION ASSISTANCE.—If
19 an agency is determined by the agency Inspector
20 General not to be in compliance under subsection (c)
21 in a fiscal year, the head of the agency may repro-
22 gram funds from any available appropriations of
23 that agency for expenditure on intensified compli-
24 ance for any delinquent program (notwithstanding

1 any appropriations transfer authority limitation in
2 any other provision of law).

3 (2) REQUIRED REMEDIATION ASSISTANCE.—If
4 an agency is determined by the agency Inspector
5 General not to be in compliance under subsection (c)
6 for 2 consecutive fiscal years, the head of the agency
7 shall reprogram funds from any available appropria-
8 tions of that agency necessary to achieve full compli-
9 ance (notwithstanding any appropriations transfer
10 authority limitation in any other provision of law).

11 (3) REMEDIATION RESCISSION.—

12 (A) IN GENERAL.—If an agency is deter-
13 mined by the agency Inspector General not to
14 be in compliance under subsection (c) for a pe-
15 riod of 3 consecutive fiscal years and any delin-
16 quent program is included in the report under
17 that subsection for 2 consecutive years during
18 that 3-fiscal year period, the head of the agency
19 shall transfer 5 percent of the available appro-
20 priations for each of those delinquent programs,
21 as determined by the head of the agency, to
22 miscellaneous receipts of the United States
23 Treasury.

24 (B) CONTINUATION OF TRANSFERS.—The
25 head of an agency shall make transfers at least

1 once annually under subparagraph (A) until the
2 agency is determined to be in compliance under
3 subsection (b).

4 (4) STOP-LOSS PROVISION.—If an agency has a
5 program that reports under section 2(b) of the Im-
6 proper Payments Information Act of 2002 (31
7 U.S.C. 3321 note) an improper payment rate great-
8 er than 15 percent for 3 consecutive fiscal years (re-
9 gardless of the whether the program is a delinquent
10 program)—

11 (A) not later than 30 days after that de-
12 termination, the head of agency shall submit to
13 Congress proposals for statutory changes or
14 other relevant actions determined necessary to
15 stop the financial loss by the program; and

16 (B) no further appropriations for such pro-
17 gram shall be authorized until such time as the
18 inspector general of that agency submits a cer-
19 tification to Congress that sufficient changes in
20 the program (whether those proposed by agency
21 or otherwise) have been implemented to warrant
22 resumed authorization of appropriations.

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