

Calendar No. 1103

110TH CONGRESS
2D SESSION**S. 2583**

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 SENATE OF THE UNITED STATES

JANUARY 31, 2008

Mr. CARPER (for himself and Mrs. McCASKILL) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

OCTOBER 1 (legislative day, SEPTEMBER 17), 2008

Reported by Mr. LIEBERMAN, with an amendment

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

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”.

1 **SEC. 2. IMPROPER PAYMENTS ELIMINATION AND RECOV-**
 2 **ERY.**

3 (a) SUSCEPTIBLE PROGRAMS AND ACTIVITIES.—See-
 4 tion 2 of the Improper Payments Information Act of 2002
 5 (31 U.S.C. 3321 note) is amended by striking subsection
 6 (a) and inserting the following:

7 “(a) IDENTIFICATION OF SUSCEPTIBLE PROGRAMS
 8 AND ACTIVITIES.—

9 “(1) IN GENERAL.—The head of each agency
 10 shall, in accordance with guidance prescribed by the
 11 Director of the Office of Management and Budget,
 12 annually review all programs and activities that it
 13 administers and identify all such programs and ac-
 14 tivities that may be susceptible to significant im-
 15 proper payments.

16 “(2) ANNUAL RISK ASSESSMENT.—

17 “(A) DEFINITION.—In this paragraph the
 18 term ‘significant’ means that improper pay-
 19 ments in the program or activity in the pre-
 20 ceeding fiscal year exceeded—

21 “(i) 2.5 percent of all program or ac-
 22 tivity payments made during that fiscal
 23 year; or

24 “(ii) \$10,000,000.

“(B) RISK ASSESSMENT.—The review under paragraph (1) shall include a risk assessment that includes—

“(i) a systematic process for producing a statistically valid estimate of the level of improper payments being made by the agency; and

“(ii) an identification of the risks for each program and activity resulting from the estimates made under clause (i).”.

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

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

“(1) a discussion of the causes of the improper payments identified; actions planned or taken to correct those causes; and the planned or actual comple-

1 tion date of the actions taken to address those
2 causes;

3 “(2) in order to reduce improper payments to
4 minimal cost-effective levels; a statement of whether
5 the agency has—

6 “(A) the internal controls, including infor-
7 mation systems;

8 “(B) the human capital; and

9 “(C) other infrastructure the agency needs;

10 “(3) if the agency does not have the internal
11 controls; a description of the resources the agency
12 has requested in its budget submission to establish
13 the internal controls;

14 “(4) a description of the steps the agency has
15 taken to ensure that agency managers (including the
16 head of the agency) are held accountable for estab-
17 lishing the appropriate internal controls, including
18 an appropriate control environment, that prevent im-
19 proper payments from occurring and promptly detect
20 and collect improper payments made; and

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

23 “(A) conducted annual improper payment
24 risk assessments;

1 “(B) developed and implemented improper
2 payment control plans; and

3 “(C) implemented appropriate improper
4 payment detection, investigation, reporting, and
5 data collection procedures and processes.”.

6 ~~(c) REPORTS ON RECOVERY ACTIONS AND GOVERN-~~
7 ~~MENTWIDE REPORTING.—~~

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

11 ~~(A) by redesignating subsections (d), (e),~~
12 ~~and (f) as subsections (f), (g), and (h), respec-~~
13 ~~tively; and~~

14 ~~(B) by inserting after subsection (c) the~~
15 ~~following:~~

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

24 ~~“(1) the types of errors from which improper~~
25 ~~payments resulted;~~

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

3 ~~“(3) the amounts recovered, outstanding, and~~
 4 ~~determined to not be collectable; 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 subsection (g) (as redesignated by
 18 this section) and inserting the following:

19 “(g) 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 (h) (as redesignated by this section)
15 and inserting the following:

16 “(h) 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—

11 (1) conducting an internal recovery audit would
 12 be effective; or

13 (2) a prior audit has identified improper pay-
 14 ments that can be recouped and it is cost beneficial
 15 for a recovery activity to recapture those funds.

16 (h) REPORT ON RECOVERY AUDITING.—Not later
 17 than 180 days after the date of the enactment of this Act,
 18 the Chief Financial Officers Council established under sec-
 19 tion 302 of the Chief Financial Officers Act of 1990 (31
 20 U.S.C. 901 note) and the President’s Council on Integrity
 21 and Efficiency established under Executive Order 12805
 22 of May 11, 1992, in consultation with recovery audit ex-
 23 perts, shall—

(1) jointly conduct a study of the potential costs and benefits of requiring Federal agencies to recover improper payments using the services of—

(A) private contractors;

(B) agency employees;

(C) cross-servicing from other agencies; or

(D) any combination of the provision of services described under subparagraphs (A) through (C); and

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

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

(B) the Committee on Oversight and Government Reform of the House of Representatives; and

(C) the Comptroller General.

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.

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

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

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

6 (i) is in compliance with section 2(a)
7 the Improper Payments Information Act of
8 2002 (31 U.S.C. 3321 note); and

9 (ii) is included in the performance re-
10 port;

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

16 (D) publishes programmatic corrective ac-
17 tion plans prepared under section 2(e) of the
18 Improper Payments Information Act of 2002
19 (31 U.S.C. 3321 note) that the agency may
20 have in the performance report;

21 (E) publishes Office of Management and
22 Budget approved improper payments reduction
23 targets in the performance report for each pro-
24 gram assessed to be at risk, and is determined

1 by the Office of Management and Budget to be
2 actively meeting such targets;

3 (F) publishes the compliance report under
4 subsection (e) in the performance report; and

5 (G) is not subject to the subsection (d)(4).

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

10 (4) PERFORMANCE REPORT.—The term “per-
11 formance report” means the performance and ac-
12 countability report referred to under section 3516(b)
13 of title 31, United States Code, or a program per-
14 formance report under section 1116 of that title.

15 (b) ANNUAL COMPLIANCE REPORT BY OMB.—

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

19 (A) the compliance status of each agency
20 under this section; and

21 (B) the delinquent programs responsible
22 for that status.

23 (2) INCLUSION IN BUDGET SUBMISSION.—The
24 Director of Office of the Management and Budget
25 shall include the report described under paragraph

1 (1) in the annual budget submitted under section
2 1105 of title 31, United States Code.

3 (c) ANNUAL COMPLIANCE REPORT BY INSPECTOR
4 GENERAL.—

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

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

17 (3) INCLUSION IN PERFORMANCE REPORT.—
18 The head of each agency shall include the report of
19 the agency Inspector General described under para-
20 graph (1) in the performance report.

21 (d) REMEDIATION ASSISTANCE.—

22 (1) VOLUNTARY REMEDIATION ASSISTANCE.—If
23 an agency is determined by the agency Inspector
24 General not to be in compliance under subsection (c)
25 in a fiscal year, the head of the agency may transfer

1 funds from any available appropriations of that
 2 agency for expenditure on intensified compliance for
 3 any delinquent program (notwithstanding any appro-
 4 priations transfer authority limitation in any other
 5 provision of law).

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

14 ~~(3)~~ REMEDIATION RESCISSION.—

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

1 miscellaneous receipts of the United States
2 Treasury.

3 ~~(B) CONTINUATION OF TRANSFERS.—~~The
4 head of an agency shall make transfers under
5 subparagraph (A) until the agency is deter-
6 mined to be in compliance under subsection (b).

7 ~~(4) STOP-LOSS PROVISION.—~~If an agency is de-
8 termined under the Improper Payments Information
9 Act of 2002 (~~31 U.S.C. 3321~~ note) to have an im-
10 proper payment rate greater than 15 percent for 3
11 consecutive fiscal years (regardless of the whether
12 the program is a delinquent program)—

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

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

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Improper Payments*
 3 *Elimination and Recovery Act of 2008”.*

4 **SEC. 2. IMPROPER PAYMENTS ELIMINATION AND RECOV-**
 5 **ERY.**

6 *(a) SUSCEPTIBLE PROGRAMS AND ACTIVITIES.—Sec-*
 7 *tion 2 of the Improper Payments Information Act of 2002*
 8 *(31 U.S.C. 3321 note) is amended by striking subsection*
 9 *(a) and inserting the following:*

10 *“(a) IDENTIFICATION OF SUSCEPTIBLE PROGRAMS*
 11 *AND ACTIVITIES.—*

12 *“(1) IN GENERAL.—The head of each agency*
 13 *shall, in accordance with guidance prescribed by the*
 14 *Director of the Office of Management and Budget, pe-*
 15 *riodically review all programs and activities that the*
 16 *relevant agency head administers and identify all*
 17 *programs and activities that may be susceptible to*
 18 *significant improper payments.*

19 *“(2) FREQUENCY.—Reviews under paragraph*
 20 *(1) shall be performed for each program and activity*
 21 *that the relevant agency head administers during the*
 22 *year after which the Improper Payments Elimination*
 23 *and Recovery Act of 2008 is enacted and at least once*
 24 *every 3 fiscal years thereafter.*

25 *“(3) RISK ASSESSMENTS.—*

1 “(A) *DEFINITION.*—*In this subsection the*
2 *term ‘significant’ means—*

3 “(i) *except as provided under clause*
4 *(ii), that improper payments in the pro-*
5 *gram or activity in the preceding fiscal*
6 *year may have exceeded—*

7 “(I) *\$10,000,000 of all program*
8 *or activity payments made during that*
9 *fiscal year reported and 2.5 percent of*
10 *program outlays; or*

11 “(II) *greater than \$100,000,000;*
12 *and*

13 “(ii) *with respect to fiscal years fol-*
14 *lowing September 30th of a fiscal year be-*
15 *ginning before fiscal year 2013 as deter-*
16 *mined by the Office of Management and*
17 *Budget, that improper payments in the pro-*
18 *gram or activity in the preceding fiscal*
19 *year may have exceeded—*

20 “(I) *\$10,000,000 of all program*
21 *or activity payments made during that*
22 *fiscal year reported and 1.5 percent of*
23 *program outlays; or*

24 “(II) *greater than \$100,000,000.*

1 “(B) *SCOPE.*—*In conducting the reviews*
2 *under paragraph (1), the head of each agency*
3 *shall take into account those risk factors that are*
4 *likely to contribute to a susceptibility to signifi-*
5 *cant improper payments, such as—*

6 “(i) *whether the program or activity*
7 *reviewed is new to the agency;*

8 “(ii) *the complexity of the program or*
9 *activity reviewed;*

10 “(iii) *the volume of payments made*
11 *through the program or activity reviewed;*

12 “(iv) *whether payments or payment*
13 *eligibility decisions are made outside of the*
14 *agency, such as by a State or local govern-*
15 *ment;*

16 “(v) *recent major changes in program*
17 *funding, authorities, practices, or proce-*
18 *dures;*

19 “(vi) *the level and quality of training*
20 *for personnel responsible for making pro-*
21 *gram eligibility determinations or certi-*
22 *fying that payments are accurate; and*

23 “(vii) *significant deficiencies in the*
24 *audit report of the agency or other relevant*

1 *management findings that might hinder ac-*
 2 *curate payment certification.”.*

3 *(b) ESTIMATION OF IMPROPER PAYMENTS.—Section 2*
 4 *of the Improper Payments Information Act of 2002 (31*
 5 *U.S.C. 3321 note) is amended by striking subsection (b) and*
 6 *inserting the following:*

7 *“(b) ESTIMATION OF IMPROPER PAYMENTS.—With re-*
 8 *spect to each program and activity identified under sub-*
 9 *section (a), the head of the relevant agency shall—*

10 *“(1) annually produce a statistically valid or*
 11 *otherwise appropriate estimate of the improper pay-*
 12 *ments made by each program and activity; and*

13 *“(2) include those estimates in the accompanying*
 14 *materials to the annual financial statement of the*
 15 *agency required under section 3515 of title 31, United*
 16 *States Code, or similar provision of law and applica-*
 17 *ble guidance of the Office of Management and Budg-*
 18 *et.”.*

19 *(c) REPORTS ON ACTIONS TO REDUCE IMPROPER PAY-*
 20 *MENTS.—Section 2 of the Improper Payments Information*
 21 *Act of 2002 (31 U.S.C. 3321 note) is amended by striking*
 22 *subsection (c) and inserting the following:*

23 *“(c) REPORTS ON ACTIONS TO REDUCE IMPROPER*
 24 *PAYMENTS.—With respect to any program or activity of an*
 25 *agency with estimated improper payments under subsection*

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

4 *“(1) a description of the causes of the improper*
5 *payments, actions planned or taken to correct those*
6 *causes, and the planned or actual completion date of*
7 *the actions taken to address those causes;*

8 *“(2) in order to reduce improper payments to a*
9 *level below which further expenditures to reduce im-*
10 *proper payments would cost more than the amount*
11 *such expenditures would save in prevented or recov-*
12 *ered improper payments, a statement of whether the*
13 *agency has what is needed with respect to—*

14 *“(A) internal controls;*

15 *“(B) human capital; and*

16 *“(C) information systems and other infra-*
17 *structure;*

18 *“(3) if the agency does not have sufficient re-*
19 *sources to establish and maintain effective internal*
20 *controls under paragraph (2)(A), a description of the*
21 *resources the agency has requested in its budget sub-*
22 *mission to establish and maintain such internal con-*
23 *trols;*

24 *“(4) program-specific and activity-specific im-*
25 *proper payments reduction targets that have been ap-*

1 *proved by the Director of the Office of Management*
 2 *and Budget; and*

3 “(5) a description of the steps the agency has
 4 *taken to ensure that agency managers, programs, and,*
 5 *where appropriate, States and localities are held ac-*
 6 *countable through annual performance appraisal cri-*
 7 *teria for—*

8 “(A) meeting applicable improper payments
 9 *reduction targets; and*

10 “(B) establishing and maintaining suffi-
 11 *cient internal controls, including an appropriate*
 12 *control environment, that effectively—*

13 “(i) prevent improper payments from
 14 *being made; and*

15 “(ii) promptly detect and recover im-
 16 *proper payments that are made.”.*

17 (d) *REPORTS ON ACTIONS TO RECOVER IMPROPER*
 18 *PAYMENTS.—Section 2 of the Improper Payments Informa-*
 19 *tion Act of 2002 (31 U.S.C. 3321 note) is amended—*

20 (1) *by striking subsection (e);*

21 (2) *by redesignating subsections (d) and (f) as*
 22 *subsections (f) and (g), respectively; and*

23 (3) *by inserting after subsection (c) the fol-*
 24 *lowing:*

1 “(d) *REPORTS ON ACTIONS TO RECOVER IMPROPER*
 2 *PAYMENTS.*—*With respect to any improper payments iden-*
 3 *tified in recovery audits conducted under section 2(h) of*
 4 *the Improper Payments Elimination and Recovery Act of*
 5 *2008, the head of the agency shall provide with the estimate*
 6 *under subsection (b) a report on all actions the agency is*
 7 *taking to recover improper payments, including—*

8 “(1) *a discussion of the methods used by the*
 9 *agency to recover improper payments;*

10 “(2) *the amounts recovered, outstanding, and de-*
 11 *termined to not be collectable, including the percent*
 12 *such amounts represent of the total improper pay-*
 13 *ments of the agency;*

14 “(3) *an aging schedule of the amounts out-*
 15 *standing;*

16 “(4) *a summary of how recovered amounts have*
 17 *been disposed of; and*

18 “(5) *if the agency has determined under section*
 19 *2(h) of the Improper Payments Elimination and Re-*
 20 *covery Act of 2008 that performing recovery audits*
 21 *for any applicable program or activity is not cost ef-*
 22 *fective, a justification for that determination.*

23 “(e) *GOVERNMENTWIDE REPORTING OF IMPROPER*
 24 *PAYMENTS AND ACTIONS TO RECOVER IMPROPER PAY-*
 25 *MENTS.*—

1 “(1) *REPORT.*—Each fiscal year the Director of
 2 the Office of Management and Budget shall submit a
 3 report with respect to the preceding fiscal year on ac-
 4 tions agencies have taken to report information re-
 5 garding improper payments and actions to recover
 6 improper payments to—

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

9 “(B) the Committee on Oversight and Gov-
 10 ernment Reform of the House of Representatives.

11 “(2) *CONTENTS.*—Each report under this sub-
 12 section shall include—

13 “(A) a summary of the reports of each agen-
 14 cy on improper payments and recovery actions
 15 submitted under this section;

16 “(B) an identification of the compliance
 17 status of each agency to which this Act applies;

18 “(C) governmentwide improper payment re-
 19 duction targets; and

20 “(D) a discussion of progress made towards
 21 meeting governmentwide improper payment re-
 22 duction targets.”.

23 (e) *DEFINITIONS.*—Section 2 of the Improper Payment
 24 Information Act of 2002 (31 U.S.C. 3321 note) is amended

1 *by striking subsections (f) (as redesignated by this section)*
 2 *and inserting the following:*

3 “(f) *DEFINITIONS.—In this section:*

4 “(1) *AGENCY.—The term ‘agency’ means an ex-*
 5 *ecutive agency, as that term is defined in section 102*
 6 *of title 31, United States Code.*

7 “(2) *IMPROPER PAYMENT.—The term ‘improper*
 8 *payment’—*

9 “(A) *means any payment that should not*
 10 *have been made or that was made in an incor-*
 11 *rect amount (including overpayments and un-*
 12 *derpayments) under statutory, contractual, ad-*
 13 *ministrative, or other legally applicable require-*
 14 *ments; and*

15 “(B) *includes any payment to an ineligible*
 16 *recipient, any payment for an ineligible good or*
 17 *service, any duplicate payment, any payment for*
 18 *a good or service not received (except for such*
 19 *payments where authorized by law), and any*
 20 *payment that does not account for credit for ap-*
 21 *plicable discounts.*

22 “(3) *PAYMENT.—The term ‘payment’ means any*
 23 *transfer or commitment for future transfer of Federal*
 24 *funds such as cash, securities, loans, loan guarantees,*
 25 *and insurance subsidies to any non-Federal person or*

1 *entity, that is made by a Federal agency, a Federal*
 2 *contractor, a Federal grantee, or a governmental or*
 3 *other organization administering a Federal program*
 4 *or activity.*

5 “(4) *PAYMENT FOR AN INELIGIBLE GOOD OR*
 6 *SERVICE.—The term ‘payment for an ineligible good*
 7 *or service’ shall include a payment for any good or*
 8 *service that is rejected under any provision of any*
 9 *contract, grant, lease, cooperative agreement, or any*
 10 *other procurement mechanism.’”.*

11 (f) *GUIDANCE BY THE OFFICE OF MANAGEMENT AND*
 12 *BUDGET.—Section 2 of the Improper Payments Informa-*
 13 *tion Act of 2002 (31 U.S.C. 3321 note) is amended by strik-*
 14 *ing subsection (g) (as redesignated by this section) and in-*
 15 *serting the following:*

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

18 “(1) *IN GENERAL.—Not later than 6 months*
 19 *after the date of enactment of the Improper Payments*
 20 *Elimination and Recovery Act of 2008, the Director*
 21 *of the Office of Management and Budget shall pre-*
 22 *scribe guidance for agencies to implement the require-*
 23 *ments of this section. The guidance shall not include*
 24 *any exemptions to such requirements not specifically*
 25 *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, and*
 5 *governmentwide reporting; and*

6 “(B) *strategies for addressing risks and es-*
 7 *tablishing appropriate prepayment and*
 8 *postpayment internal controls.”.*

9 (g) *INTERNAL CONTROLS.—*

10 (1) *REPORT ON EFFECTIVENESS OF A-123 IMPLE-*
 11 *MENTATION.—The President’s Council on Integrity*
 12 *and Efficiency shall conduct a study of the effective-*
 13 *ness of implementation of the Office of Management*
 14 *and Budget’s Circular No. A–123 (revised), Manage-*
 15 *ment’s Responsibility for Internal Control at pre-*
 16 *venting 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 en-*
 19 *actment of this Act, submit a report on the study to—*

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

22 (B) *the Committee on Oversight and Gov-*
 23 *ernment Reform of the House of Representatives;*

24 (C) *the Director of the Office of Manage-*
 25 *ment and Budget; and*

1 (D) the Comptroller General.

2 (2) CONSULTATION AND COOPERATION.—The
 3 President’s Council on Integrity and Efficiency shall
 4 consult and cooperate with the committees and direc-
 5 tor described under paragraph (1) to ensure the na-
 6 ture and scope of the study under paragraph (1) will
 7 address the needs of those committees and the Director
 8 of the Office of Management and Budget, including
 9 how the implementation of Circular No. A–123 (re-
 10 vised) has helped to identify, report, prevent, and re-
 11 cover improper payments.

12 (3) DETERMINATION OF AGENCY READINESS FOR
 13 OPINION ON INTERNAL CONTROL.—Not later than 1
 14 year after the date of enactment of the Improper Pay-
 15 ments Elimination and Recovery Act of 2008, the Di-
 16 rector of the Office of Management and Budget shall
 17 develop—

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

21 (B) criteria for an agency that has dem-
 22 onstrated a stabilized, effective system of internal
 23 control over financial reporting, whereby the
 24 agency would qualify for a multiyear cycle for
 25 obtaining an audit opinion on internal control

1 *over financial reporting, rather than an annual*
 2 *cycle.*

3 (h) *RECOVERY AUDITS.*—

4 (1) *IN GENERAL.*—

5 (A) *CONDUCT OF AUDITS.*—*Except as pro-*
 6 *vided under paragraph (3), the head of each ex-*
 7 *ecutive agency shall conduct recovery audits with*
 8 *respect to each program and activity of the agen-*
 9 *cy that expends \$1,000,000 or more annually if*
 10 *conducting such audits would be cost-effective.*

11 (B) *PROCEDURES.*—*In conducting recovery*
 12 *audits under this subsection, the head of an exec-*
 13 *utive agency—*

14 (i) *shall give priority to the most re-*
 15 *cent payments;*

16 (ii) *shall implement this subsection in*
 17 *a manner designed to ensure the greatest fi-*
 18 *nancial benefit to the Government; and*

19 (iii) *may conduct recovery audits di-*
 20 *rectly, by procuring performance of recovery*
 21 *audits by contract (subject to the avail-*
 22 *ability of appropriations), or by any com-*
 23 *bination thereof.*

1 (C) *RECOVERY AUDIT CONTRACTS.*—With
 2 respect to recovery audits procured by an execu-
 3 tive agency by contract—

4 (i) subject to subparagraph (B)(iii),
 5 the head of the agency may authorize the
 6 contractor to notify entities (including per-
 7 sons) of potential overpayments made to
 8 such entities, respond to questions con-
 9 cerning potential overpayments, and take
 10 other administrative actions with respect to
 11 overpayment claims made or to be made by
 12 the agency; and

13 (ii) such contractor shall have no au-
 14 thority to make final determinations relat-
 15 ing to whether any overpayment occurred
 16 and whether to compromise, settle, or termi-
 17 nate overpayment claims.

18 (D) *CONTRACT TERMS AND CONDITIONS.*—
 19 The executive agency shall include in each con-
 20 tract for procurement of performance of a recov-
 21 ery audit a requirement that the contractor
 22 shall—

23 (i) provide to the agency periodic re-
 24 ports on conditions giving rise to overpay-
 25 ments identified by the contractor and any

1 *recommendations on how to mitigate such*
 2 *conditions; and*

3 (ii) *notify the agency of any overpay-*
 4 *ments identified by the contractor per-*
 5 *taining to the agency or to any other agen-*
 6 *cy or agencies that are beyond the scope of*
 7 *the contract.*

8 (E) *EXECUTIVE AGENCY ACTION FOLLOWING*
 9 *NOTIFICATION.—An executive agency shall take*
 10 *prompt and appropriate action in response to a*
 11 *report or notification by a contractor under sub-*
 12 *paragraph (D)(ii), including forwarding to other*
 13 *executive agencies any information that applies*
 14 *to such agencies.*

15 (2) *DISPOSITION OF AMOUNTS RECOVERED.—*

16 (A) *IN GENERAL.—Amounts collected by ex-*
 17 *ecutive agencies each fiscal year through recovery*
 18 *audits conducted under this subsection shall be*
 19 *treated in accordance with this paragraph.*

20 (B) *USE FOR FINANCIAL MANAGEMENT IM-*
 21 *PROVEMENT PROGRAM.—Not more than 25 per-*
 22 *cent of the amounts collected by an executive*
 23 *agency through recovery audits—*

24 (i) *shall be available to the head of the*
 25 *agency or the State or local government ad-*

1 *ministering the program or activity to*
 2 *carry out the financial management im-*
 3 *provement program of the agency under*
 4 *paragraph (3);*

5 *(ii) may be credited, if applicable, for*
 6 *that purpose by the agency head to any*
 7 *agency appropriations and funds that are*
 8 *available for obligation at the time of collec-*
 9 *tion; and*

10 *(iii) shall be used to supplement and*
 11 *not supplant any other amounts available*
 12 *for that purpose and shall remain available*
 13 *until expended.*

14 (C) *USE FOR ORIGINAL PURPOSE.—Not*
 15 *more than 25 percent of the amounts collected by*
 16 *an executive agency—*

17 *(i) shall be credited to the appropria-*
 18 *tion or fund, if any, available for obligation*
 19 *at the time of collection for the same general*
 20 *purposes as the appropriation or fund from*
 21 *which the overpayment was made; and*

22 *(ii) shall remain available for the same*
 23 *period and purposes as the appropriation*
 24 *or fund to which credited.*

1 (D) *USE FOR INSPECTOR GENERAL ACTIVITIES.*—Not more than 5 percent of the amounts
 2 collected by an executive agency shall be avail-
 3 able to the Inspector General of that agency
 4 for—
 5

6 (i) *the Inspector General to carry out*
 7 *this Act; or*

8 (ii) *any other activities of the Inspec-*
 9 *tor General relating to investigating im-*
 10 *proper payments or auditing internal con-*
 11 *trols associated with payments.*

12 (E) *REMAINDER.*—Amounts collected that
 13 are not applied in accordance with subpara-
 14 graphs (B), (C), or (D) or to meet obligations to
 15 recovery audit contractors shall be deposited in
 16 the Treasury as miscellaneous receipts.

17 (3) *FINANCIAL MANAGEMENT IMPROVEMENT PRO-*
 18 *GRAM.*—

19 (A) *REQUIREMENT.*—The head of each exec-
 20 *utive agency shall conduct a financial manage-*
 21 *ment improvement program, consistent with*
 22 *rules prescribed by the Director of the Office of*
 23 *Management and Budget.*

24 (B) *PROGRAM FEATURES.*—In conducting
 25 the program, the head of the executive agency—

1 (i) shall, as the first priority of the
 2 program, address problems that contribute
 3 directly to agency improper payments; and
 4 (ii) may seek to reduce errors and
 5 waste in other executive agency programs
 6 and operations.

7 (4) *RULE OF CONSTRUCTION.*—Nothing in this
 8 section shall be construed as terminating or in any
 9 way limiting authorities that are otherwise available
 10 to agencies under existing provisions of law to recover
 11 improper payments and use recovered amounts.

12 (i) *REPORT ON RECOVERY AUDITING.*—Not earlier
 13 than 2 years after the date of the enactment of this Act,
 14 the Chief Financial Officers Council established under sec-
 15 tion 302 of the Chief Financial Officers Act of 1990 (31
 16 U.S.C. 901 note), in consultation with the President’s
 17 Council on Integrity and Efficiency established under Exec-
 18 utive Order 12805 of May 11, 1992 and recovery audit ex-
 19 perts, shall jointly conduct a study of—

20 (1) the implementation of subsection (h);
 21 (2) the costs and benefits of agency recovery
 22 audit activities, including those under subsection (h),
 23 and including the effectiveness of using the services
 24 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 (3) 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 Representatives;
12 and

13 (C) the Comptroller General.

14 **SEC. 3. COMPLIANCE.**

15 (a) *DEFINITIONS.*—In this section:

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

20 (2) *ANNUAL FINANCIAL STATEMENT.*—The term
21 “annual financial statement” means the annual fi-
22 nancial statement required under section 3515 of title
23 31, United States Code, or similar provision of law.

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

1 (A) has published an annual financial
2 statement for the most recent fiscal year and
3 posted that report and any accompanying mate-
4 rials required under guidance of the Office of
5 Management and Budget on the agency website;

6 (B) has conducted a program specific risk
7 assessment for each program or activity that
8 conforms with section 2(a) the Improper Pay-
9 ments Information Act of 2002 (31 U.S.C. 3321
10 note); and

11 (C) publishes improper payments estimates
12 for all programs and activities identified under
13 section 2(b) of the Improper Payments Informa-
14 tion Act of 2002 (31 U.S.C. 3321 note) in the ac-
15 companying materials to the annual financial
16 statement;

17 (D) publishes programmatic corrective ac-
18 tion plans prepared under section 2(c) of the Im-
19 proper Payments Information Act of 2002 (31
20 U.S.C. 3321 note) that the agency may have in
21 the accompanying materials to the annual finan-
22 cial statement;

23 (E) publishes improper payments reduction
24 targets in the accompanying materials to the an-
25 nual financial statement for each program as-

1 *essed to be at risk, and is actively meeting such*
 2 *targets;*

3 *(F) has reported an improper payment rate*
 4 *of less than 15 percent for each program and ac-*
 5 *tivity; and*

6 *(G) publishes the report under subsection*
 7 *(b) in the accompanying materials to the annual*
 8 *financial statement.*

9 *(b) ANNUAL COMPLIANCE REPORT BY AGENCY INSPEC-*
 10 *TORS GENERAL.—*

11 *(1) IN GENERAL.—Each fiscal year, the Inspec-*
 12 *tor General of each agency shall determine whether*
 13 *the agency is in compliance and submit a report to*
 14 *the head of the agency on that determination.*

15 *(2) INCLUSION IN ACCOMPANYING MATERIALS TO*
 16 *THE ANNUAL FINANCIAL STATEMENT.—The head of*
 17 *each agency shall include the report of the agency In-*
 18 *spector General described under paragraph (1) in the*
 19 *accompanying materials to the annual financial*
 20 *statement.*

21 *(c) REMEDIATION.—*

22 *(1) NONCOMPLIANCE.—*

23 *(A) IN GENERAL.—If an agency is deter-*
 24 *mined by the agency Inspector General not to be*
 25 *in compliance under subsection (b) in a fiscal*

1 *year, the head of the agency shall submit a plan*
 2 *to Congress describing the actions that the agen-*
 3 *cy will take to come into compliance.*

4 *(B) PLAN.—The plan described under sub-*
 5 *paragraph (A) shall include—*

6 *(i) measurable milestones to be accom-*
 7 *plished in order to achieve compliance;*

8 *(ii) the designation of a senior agency*
 9 *official who shall be accountable for the*
 10 *progress of the agency in coming into com-*
 11 *pliance; and*

12 *(iii) the establishment of an account-*
 13 *ability mechanism, such as a performance*
 14 *agreement, with appropriate incentives and*
 15 *consequences tied to the success of the offi-*
 16 *cial designated under clause (ii) in leading*
 17 *the efforts of the agency to come into com-*
 18 *pliance.*

19 *(2) NONCOMPLIANCE FOR 2 FISCAL YEARS.—*

20 *(A) IN GENERAL.—If an agency is deter-*
 21 *mined by the agency Inspector General not to be*
 22 *in compliance under subsection (b) for 2 consec-*
 23 *utive fiscal years and the Director of the Office of*
 24 *Management and Budget determines that addi-*
 25 *tional funding would help the agency come into*

1 *compliance, the head of the agency shall obligate*
2 *additional funding, in an amount determined by*
3 *the Director, to intensify compliance efforts.*

4 (B) *FUNDING.—In providing additional*
5 *funding described under subparagraph (A), the*
6 *head of an agency shall use any reprogramming*
7 *or transfer authority available to the agency. If*
8 *after exercising that reprogramming or transfer*
9 *authority additional funding is necessary to ob-*
10 *ligate the full level of funding determined by the*
11 *Director of the Office of Management and Budget*
12 *under subparagraph (A), the agency shall submit*
13 *a request to Congress for additional reprogram-*
14 *ming or transfer authority.*

15 (3) *NONCOMPLIANCE FOR 3 FISCAL YEARS.—*

16 (A) *IN GENERAL.—If an agency is deter-*
17 *mined by the agency Inspector General not to be*
18 *in compliance under subsection (b) for 3 consecu-*
19 *tive fiscal years and the Director of the Office of*
20 *Management and Budget determines that addi-*
21 *tional funding would help the agency come into*
22 *compliance, the head of the agency shall obligate*
23 *additional funding, in an amount determined by*
24 *the Director, to intensify compliance efforts.*

1 (B) *FUNDING.*—Additional funding de-
 2 scribed under subparagraph (A) may come from
 3 any available appropriations administered by
 4 the agency notwithstanding any limitation in
 5 any other provision of law.

6 (C) *REAUTHORIZATION PROPOSALS.*—If an
 7 agency is determined by the agency Inspector
 8 General not to be in compliance under subsection
 9 (b) for more than 3 consecutive fiscal years, the
 10 head of the agency shall, not later than 30 days
 11 after such determination, submit to Congress—

12 (i) reauthorization proposals for each
 13 program responsible for the determination;
 14 and

15 (ii) proposed statutory changes nec-
 16 essary to bring the agency into compliance.

17 (D) *CONGRESSIONAL ACTION FOR DISCRE-*
 18 *TIONARY PROGRAMS.*—

19 (i) *IN GENERAL.*—Congress shall reau-
 20 thorize each discretionary program for
 21 which proposals have been submitted under
 22 subparagraph (C) taking into account the
 23 requirements of this Act and the pro-
 24 grammatic changes required to achieve

1 *agency compliance and eliminate improper*
2 *payments.*

3 (ii) *FAILURE TO ACT.—If Congress*
4 *fails to act on any reauthorization proposal*
5 *submitted under subparagraph (C) within 2*
6 *fiscal years following the year of a deter-*
7 *mination made under that subparagraph*
8 *and the Director of the Office of Manage-*
9 *ment and Budget determines that sufficient*
10 *changes have not been made to the program*
11 *to bring the agency that has submitted the*
12 *proposal into compliance by the time the*
13 *agency submits its next annual financial*
14 *statement under section 3315 of title 31,*
15 *United States Code, the authorized level of*
16 *funding for the program shall not increase*
17 *above the authorized level in the second fis-*
18 *cal year following the year of that deter-*
19 *mination under subparagraph (C) until*
20 *Congress acts or the agency comes into com-*
21 *pliance.*

22 (E) *ENTITLEMENT PROGRAMS.—Subpara-*
23 *graph (D) shall not apply to entitlement pro-*
24 *grams under section 3(9) of the Congressional*

1 *Budget and Impoundment Control Act of 1974*
2 *(2 U.S.C. 622(9)).*

3 *(d) COMPLIANCE ENFORCEMENT PILOT PROGRAMS.—*

4 *(1) IN GENERAL.—The Director of the Office of*
5 *Management and Budget may establish 1 or more*
6 *pilot programs which shall test potential account-*
7 *ability mechanisms with appropriate incentives and*
8 *consequences tied to success in ensuring compliance*
9 *with this Act and eliminating improper payments.*

10 *(2) REPORT.—Not later than 5 years after the*
11 *date of enactment of this Act, the Director of the Of-*
12 *fice of Management and Budget shall submit a report*
13 *to Congress on the findings associated with any pilot*
14 *programs conducted under paragraph (1). Such re-*
15 *port shall include any legislative or other rec-*
16 *ommendations that the Director determines necessary.*

Calendar No. 1103

110TH CONGRESS
2^D Session

S. 2583

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.

OCTOBER 1 (legislative day, SEPTEMBER 17), 2008
Reported with an amendment