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112TH CONGRESS }
2d Session }

SENATE

{ REPORT
112-181 }

IMPROPER PAYMENTS ELIMINATION AND
RECOVERY IMPROVEMENT ACT OF 2011

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1409

TO INTENSIFY EFFORTS TO IDENTIFY, PREVENT, AND RECOVER
PAYMENT ERROR, WASTE, FRAUD, AND ABUSE WITHIN FEDERAL
SPENDING



JULY 12, 2012.—Ordered to be printed

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Mr. LIEBERMAN, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1409]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1409) to intensify efforts to identify, prevent, and recover payment error, waste, fraud, and abuse within Federal spending, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

CONTENTS

	Page
I. Purpose and Summary	1
II. Background and Need for the Legislation	2
III. Legislative History	4
IV. Section-by-Section Analysis	4
V. Evaluation of Regulatory Impact	7
VI. Congressional Budget Office Estimate	8
VII. Changes in Existing Law Made by the Bill, as Reported	10

I. PURPOSE AND SUMMARY

Each year, the Federal government makes billions of dollars in “improper payments”—funds sent to the wrong recipient, checks written for the wrong amount, or government money going for an improper purpose. S. 1409 seeks to prevent the loss of these taxpayer dollars by intensifying agencies’ efforts to prevent, identify, and recover improper payments. The Act directs the Office of Management and Budget (OMB) to issue new guidance to agencies to enable them to better estimate and thereby understand the scope of the improper payment problem. The Act also establishes a “Do Not Pay Initiative” to help federal agencies easily identify entities

to which it should not make payments, and it directs OMB to work with other agencies and stakeholders to curb improper payments made to deceased individuals. Finally, the Act requires the federal government to establish a set of Recovery Audit Contracting pilot programs through which private companies will help identify improper payments made by agencies.

II. BACKGROUND AND NEED FOR THE LEGISLATION

Federal agencies began to deal comprehensively with improper payments following the enactment of the Improper Payments Information Act of 2002 (IPIA),¹ which required each agency subject to the requirements of the Chief Financial Officers Act of 1990² to annually review all programs and activities that it administers, identify all such programs and activities that may be susceptible to significant improper payments, develop improper payments estimates for those programs deemed susceptible, and report the estimates annually. Congress revisited the issue in July 2010, with the enactment of the Improper Payments Elimination and Recovery Act of 2010 (IPERA).³ This law amended IPIA by expanding on the previous requirements for identifying, estimating, and reporting on programs and activities susceptible to significant improper payments, and expanding requirements for recovering overpayments across a broad range of federal programs.

As with IPIA, IPERA requires agencies to identify programs that are susceptible to significant improper payments and, for those programs, estimate the annual amount of improper payments and submit those estimates to the Congress and the public. IPERA also added a requirement that any program with estimated improper payments exceeding specific dollar amounts and error rate thresholds set out in the law must report on the actions the agency is taking to reduce improper payments. The law also requires improper payment recovery audits for all programs with annual expenditures greater than \$1 million. The law specifies that agencies can direct recovered funds to pay for a variety of efforts aimed at ensuring better administration of its programs. IPERA also includes incentives and budgetary penalties for programs that fail to comply with the requirements of the law over a reasonable number of years.

According to the Government Accountability Office (GAO), federal agencies reported an estimated \$125.4 billion in improper payments in fiscal year 2010, an increase of about \$16 billion over the fiscal year 2009 estimate of \$109.2 billion.⁴ The fiscal year 2010 estimate represents about 5.5 percent of the \$2.3 trillion of reported outlays for the related programs. The \$125.4 billion in improper payments in fiscal year 2010 comes from over 70 programs spread among 20 federal agencies. An overwhelming majority of the \$125.4 billion of reported improper payments came from just 10 programs, which account for about \$118 billion or 94 percent of the total esti-

¹Pub. Law 107-300.

²Public Law 101-576. Section 901 of the CFO Act specifies the agencies subject to its mandate.

³Pub. Law 111-204.

⁴GAO, Status of Fiscal Year 2010 Federal Improper Payments Reporting, GAO-11-443R, March 25, 2011.

mated improper payments reported for fiscal year 2010.⁵ It is worth noting that these figures probably underestimate the problem; seven high risk programs, which almost certainly make some improper payments, still are not reporting improper payment estimates.⁶

Although the existing statutes and executive actions have made important strides in addressing improper payment rates, federal agencies continue to make a substantial amount of improper payments. Further, not all agencies are making robust and complete estimates of improper payments. For example, the DOD Office of Inspector General completed an audit describing the Department's need for improved estimates.⁷ The GAO made similar comments regarding DOD.⁸

On May 25, 2011, the Committee's Federal Financial Management Subcommittee held a hearing to examine the improper payments issue and to explore whether additional measures are needed to address the problem.⁹ Daniel I. Werfel, OMB's Comptroller, discussed the Administration's improper payments estimates and offered the Administration's view on the root causes of the improper payment problem. He also described the implementation of IPERA. Mr. Werfel, along with Richard L. Gregg, Fiscal Assistant Secretary from the Department of Treasury, detailed an Administration initiative, outlined in an Executive Memorandum, to screen all federal payments before they are made.¹⁰ Calvin L. Scovel III, Vice Chairman of the Recovery Accountability and Transparency Board (an entity established as part of the American Recovery and Reinvestment Act to examine Recovery Act spending) testified about the Board's history in detecting and preventing fraudulent payments. Kelly Croft, Deputy Commissioner for Systems at the Social Security Administration, and Robert F. Hale, Comptroller of DOD, described improper payments issues arising in their respective agencies, as well as opportunities for improving the detection, prevention, and recovery of improper payments.

S. 1409 reflects the lessons learned through the May 2011 hearing, as well as the Committee's other ongoing oversight in the area. The bill directs the OMB to issue new guidance to agencies to enable them to better estimate and thereby understand the scope of the improper payment problem. The Act also establishes a "Do Not Pay Initiative" to help federal agencies more easily identify entities

⁵The ten programs are: Federal Student Aid-Pell Grants, National School Lunch Program, Supplemental Nutrition Assistance Program, Old Age and Survivor's Insurance, Supplemental Security Income Program, Medicare Advantage, Earned Income Tax Credit, Unemployment Insurance, Medicaid, Medicare Fee-For-Service.

⁶The seven high risk programs not reporting improper payment estimates are: Department of Education—Federal Family Education Loan Program; Department of Health and Human Services—Temporary Assistance for Needy Families; Department of Health and Human Services—Medicare Prescription Drug Benefit; Department of Health and Human Services—Children's Health Insurance Program; Federal Communications Commission—High-Cost Support Program; Federal Communications Commission—Low-Income Program; Federal Communications Commission—Schools and Libraries.

⁷"DOD Needs to Improve High Dollar Overpayment Review and Reporting," D-2011-050, March 16, 2011, DOD Office of Inspector General.

⁸"Improper Payments: Progress Made but Challenges Remain in Estimating and Reducing Improper Payments," GAO, April 22, 2009.

⁹"Assessing Efforts to Eliminate Improper Payments, May 25th, 2011; http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_id=7dd2c4ec-1fee-4117-8efd-f0.277206607

¹⁰"Presidential Memorandum—Enhancing Payment Accuracy Through a 'Do Not Pay List,'" The White House, June 18th, 2010, <http://www.whitehouse.gov/the-press-office/presidential-memorandum-enhancing-payment-accuracy-through-a-do-not-pay-list>.

to which it should not make payments, and it directs OMB to work with other agencies and stakeholders to curb improper payments made to deceased individuals. Finally, the Act requires the federal government to establish a set of Recovery Audit Contracting pilot programs through which private companies will help identify improper payments made by agencies.

III. LEGISLATIVE HISTORY

S. 1409 was introduced by Senators Carper, Collins, Lieberman, and Scott Brown on July 22, 2011, and referred to the Committee.

The Committee considered S. 1409 at a business meeting on October 19, 2011. The Committee adopted by voice vote a substitute amendment offered by Senators Carper, Collins, Lieberman, and Brown. Members present for the vote on the substitute were Senators Lieberman, Akaka, Carper, Pryor, McCaskill, Begich, Collins, Brown, and Johnson. The Committee then voted to report the bill, again by voice vote. Members present for the vote on the bill were Senators Lieberman, Akaka, Carper, Pryor, McCaskill, Begich, Collins, Brown, and Johnson.

The substitute amends S. 1409 to make several substantive improvements. Some of the definitions of Section 2 were clarified. The language in Section 3 that requires more consistent estimates of improper payments was modified for purposes of clarity, and to more closely address the recommendations of both the Government Accountability Office and Inspectors General. The requirement of the original language to develop a database of incarcerated individuals was changed to become a requirement to report on recommendations for such a database. The requirement for a plan by OMB to develop potential statutory recommendations for implementing the “Do Not Pay Initiative” was modified to, in addition, place in statute allowing multilateral data use agreements. Finally, there were some small modifications to the description of databases and types of Recovery Audit Contracts.

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

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

Section 2. Definition

This section defines the term “agency” used in the bill by reference to 5 U.S.C. § 105, part of the Chief Financial Officers Act laying out the major agencies covered under current statutes defining executive branch agencies.

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

Subsection (a) amends the IPIA of 2002 by strengthening the identification and reporting of agency improper payments, including codifying an existing Executive Order on improper payments estimating and reporting.¹¹

¹¹Executive Order 13520, *Reducing Improper Payments*, November 20, 2009.

It requires the Director of the OMB annually to identify high-priority programs for greater oversight and review based on those that have the highest dollar value or percentage of improper payments on a government-wide basis, or for which there is high risk of improper payments. For these programs, OMB, in conjunction with the agency identified as having a high-priority program or programs, would establish annual targets, and semi-annual or quarterly actions, for reducing improper payments.¹²

In addition, agencies would be 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.¹³ This public disclosure would occur in compliance with existing privacy policies and would not include referrals to the Department of Justice. These reports would also include action planned or taken by the agency to recover improper payments and would be made public by OMB on a central, publicly available website. Upon submission of these reports, the Inspector General would (1) review the risk level associated with the program, including the quality of the improper payments estimates and the methodology used by the agency; 2) assess the adequacy of financial controls to identify and prevent improper payments; and 3) make recommendations to the agency, including those regarding the improper payments determination and estimation methodology.

Subsection (b) would require 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 is intended to strengthen the estimation process by having OMB set standards to ensure the underlying validity of sampled payments, including by: 1) instructing agencies to give persons or entities performing improper payments estimates access to all necessary payment data, including relevant documentation; 2) explicitly barring agencies from basing estimates solely on self-reporting by the sub-agencies that made the payments or outside contractors who received the payments; 3) reporting all overpayments regardless of whether they have been recovered; 4) capturing payments to employees, including salary, locality pay, travel pay, purchase card use, and other employee payments, subjecting them to risk assessments and including them in the improper payment estimation where appropriate; and 5) requiring agencies to tailor corrective action for high-priority programs to better reflect the unique procedures, processes, and risks of each program.

Subsection (c) provides for technical and conforming amendments to IPERA.

Section 4. Improper payments information

This section would provide for a technical correction to IPERA that has already been addressed in guidance by OMB.¹⁴ This correction would require that, beginning in fiscal year 2014 and in each fiscal year thereafter, agencies subject to IPERA are required to report programs with improper payments of \$10 million annually or that represent 1.5 percent of program outlays, or programs with improper payments over \$100 million. The date in the enacted

¹² Executive Order 13520, Sec. 2(a).

¹³ Executive Order 13520, Sec. 3(f).

¹⁴ M-11-16, Part I (A).

legislation was incorrect, and the technical correction conforms IPERA to Congressional intent.

Section 5. Do Not Pay Initiative

Subsection (a) establishes the Do Not Pay Initiative, which would require prepayment and contract award screening against databases containing relevant information on payees to verify eligibility and prevent improper payments. The subsection requires that each agency review its prepayment and pre-award procedures and ensure a thorough review of available databases containing relevant information on payee eligibility in order to determine payment or award eligibility and prevent improper payments. At a minimum, before payment and award, agencies would check as appropriate the: (1) Social Security Administration's Death Master File; (2) General Services Administration's Excluded Parties List System; (3) Debt Check Database of the Department of the Treasury; (4) Credit Alert System or Credit Alert Interactive Voice Response System of the Department of Housing and Urban Development; and (5) List of Excluded Individuals/Entities of the Office of Inspector General of the Department of Health and Human Services.

Subsection (b) requires OMB to establish a Do Not Pay Initiative comprised of the databases above, and other databases as designated by the OMB Director, which may assist in preventing improper payments. Each agency would have access to and use the Do Not Pay Initiative for pre-payment and pre-award screening once the OMB Director determines its appropriateness for use by the agency. When using the Do Not Pay Initiative, agencies should recognize that there may be circumstances under law that require payment(s) or award(s) be made to a recipient, irrespective of whether that recipient is on the Do Not Pay Initiative.

Subsection (c) requires that within 60 days of enactment, the OMB Director must 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 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 investigation activities for fraud and systemic improper payment detection through analytic technologies, which may include commercial database use or access. Each agency would be required to review all of its payments and awards through the Do Not Pay Initiative no later than January 1, 2013.

Subsection (e) requires that within 60 days of enactment, OMB shall establish a plan for executing multilateral data use agreements for the Do Not Pay Initiative, including access to the New Hires Database (a database maintained by the U.S. Department of Health and Human Services and that includes specific employment information) and other databases. The subsection amends the Privacy Act to allow for the multilateral data use agreements between and among federal agencies. Currently, that Act only allows bilateral agreements between two agencies. The subsection requires multilateral data use agreements to include regulations and guide-

lines that ensure data access, as well as transfer and storage of data in a manner consistent with relevant privacy, security, and disclosure laws. The OMB Director would be required to consult with the Council of Inspectors General on Integrity and Efficiency, the Secretary of Health and Human Services, the Social Security Administrator, and other agency heads as appropriate.

Subsection (f) requires that within one year of enactment, the Attorney General would submit to Congress recommendations for increasing the use of, access to, and technical feasibility of using Federal, State, and local conviction and incarceration databases to determine the incarceration status of individuals in order to identify and 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. It must also provide for improved electronic means of accessing and providing data. The plan must also address potential proactive steps for identifying improper payments to deceased individuals, as well as address specific issues relevant to federal retirement programs. 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.

Subsection (b) requires the OMB Director, within 90 days of enactment, to establish and implement a plan for no fewer than ten recovery audit contracting programs at ten agencies. The ten programs must represent programs of varying size, payment types, and recipient types. These programs must become operational within one year of the plan establishment and be conducted for three years. Within two years of establishment, the agency head conducting the program would be required to report to Congress regarding the program's impact on savings and recoveries, and provide recommendations to extend or expand the program.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirement of paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and has determined that the bill will have no regulatory impact within the meaning of the rule. The Committee agrees with CBO's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1409—Improper Payments Elimination and Recovery Improvement Act of 2011

Summary: S. 1409 would amend federal law to require federal agencies to expand their efforts to identify, recover, and prevent improper payments (including overpayments, underpayments, payments that were not adequately documented, and fraudulent payments). The legislation would require the Office of Management and Budget (OMB) to provide guidance, oversight, and review of agencies' efforts to manage improper payments. S. 1409 also would establish additional responsibilities for agencies and require them to operate Recovery Audit Contracting (RAC) programs.

Based on information from federal agencies, CBO estimates that implementing S. 1409's new requirements to identify, recover, and prevent improper payments would cost \$735 million over the 2013–2017 period, subject to appropriation of the necessary funds. CBO expects that conducting RAC programs would lead to net recoveries that would exceed the costs of operating the programs, with net savings for the federal government that would probably be several million dollars. However, the savings cannot be attributed to S. 1409 because of long-standing rules established by the Congress for estimating the effects of proposed legislation that could generate programmatic savings stemming from new authority for administrative activity. Enacting S. 1409 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 1409 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1409 is shown in the following table. The costs of this legislation fall within most budget functions.

	By fiscal year, in millions of dollars—					
	2013	2014	2015	2016	2017	2013–2017
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	50	245	245	195	0	735
Estimated Outlays	45	225	245	200	20	735

Basis of estimate: For this estimate, CBO assumes that S. 1409 will be enacted in fiscal year 2012, that the necessary funds will be provided for each year, and that spending will follow historical patterns for similar programs.

S. 1409 would expand upon current law, Executive Order 13520, and two Presidential memoranda to require federal agencies to expand their efforts to identify, recover, and prevent improper payments. The legislation would require that 10 RAC pilot programs be initiated for three years. (Recovery auditing is a process of using contractors to review payment transactions and supporting data to identify and recover overpayments and respond to underpayments.) In addition, the legislation would require additional reporting by agencies and an expansion of the federal government's "Do Not Pay List" (a database to prevent the government from paying benefits, contracts, grants, and loans to ineligible people or organizations).

Improper payments include payments of an incorrect amount (both overpayments and underpayments), to the wrong recipient, made without proper documentation, or for unauthorized or inappropriate purposes. Not all improper payments involve fraud or result in a loss to the federal government. The Government Accountability Office has reported that federal agencies estimate they made \$115.3 billion in improper payments during fiscal year 2011. Just 10 federal programs accounted for 93 percent of those improper payments.¹

In 2005, the Centers for Medicare and Medicaid Services (CMS) started a RAC demonstration program. As part of the demonstration, CMS made available to recovery audit contractors claims from 2001 through 2007, and the contractors identified and corrected errors in about 0.3 percent of those claims. The demonstration program cost about \$200 million to operate and returned about \$695 million to the Medicare trust funds. A RAC program was subsequently implemented nationwide for fee-for-service claims: over the 2008–2011 period, CMS spent about \$570 million to develop the Recovery Audit Contractor Data Warehouse, to improve data collection and analysis, and to pay for recurring costs of the contract. As a result, it recovered overpayments of \$873 million and corrected underpayments of almost \$160 million, for a net savings of about \$140 million. In 2012 and subsequent years, net recoveries should exceed the recurring costs of the program by a larger margin as the nonrecurring expenditures to establish the program continue to produce savings.

Assuming other agencies would have similar costs for establishing RAC programs, CBO expects that implementing 10 RAC programs would cost \$735 million over the 2013–2017 period. This would include about \$1 million annually to implement each of several smaller RACs and about \$50 million annually per RAC for larger programs with improper payments, including health care, taxes, Social Security, unemployment, and nutrition.

CBO also expects that, over time, net recoveries from RACs would exceed payments to contractors for program management costs. That is, net recoveries would probably exceed \$735 million. Based on the current program operated by CMS, CBO expects that the new RACs would incur net costs over the first few years for development, implementation, and administration, but would have net gains in later years. Net savings over time would depend upon the programs reviewed. CBO expects that such savings would likely total several million dollars over the 2013–2017 period, but would likely be significantly less than the RAC program run by CMS. The current program recoups payments from institutions such as hospitals, skilled nursing facilities, and other providers, including physicians and suppliers of durable medical equipment. Amounts can be recovered by reducing future program payments to those institutions or by seeking reimbursement from their assets. In contrast, many of the new RACs would seek to recover overpayments to many individual beneficiaries of income support programs such as Disability Insurance and Supplemental Nutritional Assist-

¹ Those programs were: Medicare fee-for-service, Medicaid, Earned Income Tax Credit, Unemployment Insurance, Medicare Advantage, Supplemental Security Income, Old Age Survivors and Disability Insurance, Supplemental Nutrition Assistance, National School Lunch, and Medicare Prescription Drug Benefit.

ance. Agencies may face limits on the amount that they can garnish from subsequent payments to such individuals, who are also less likely to have savings or other income with which to repay the federal government.

For this cost estimate, however, CBO cannot attribute savings to S. 1409’s RAC provisions because any such savings would either be contingent on future legislation or would be subject to Scorekeeping Guideline 14 (as established by the Congress and explained below). While S. 1409 would authorize and direct agencies to operate RAC programs, this bill would not provide any funds to operate those new programs. In some cases, the amounts necessary to operate such programs would stem from subsequent appropriation acts; thus, S. 1409 cannot be credited for achieving those savings itself. In other cases, a mandatory spending program might directly fund the administrative costs of a RAC program, but Scorekeeping Guideline 14 states that: *“No increase in receipts or decrease in direct spending will be scored as a result of provisions of a law that provides direct spending for administration or program management activities.”* Therefore, any savings that may result from additional spending on administrative activities aimed at achieving operational efficiencies cannot be counted (for Congressional scorekeeping purposes) as a direct result of the legislation providing such a funding source. If enacted, any expected savings attributable to the creation of new RAC programs would ultimately be included in baseline budget projections, and any savings achieved would be reflected in the budget data.

Pay-As-You-Go considerations: None.

Intergovernmental and private-sector impact: S. 1409 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no significant costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: David Newman, Matthew Pickford, and Lara Robillard; Impact on state, local, and tribal governments: Elizabeth Cove Delisle; Impact on the private sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

VII. CHANGES TO EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1409 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

* * * * *

PART I—THE AGENCIES GENERALLY

* * * * *

CHAPTER 5—ADMINISTRATIVE PROCEDURE

* * * * *

Subchapter II—Administrative Procedure

* * * * *

SEC. 552A. RECORDS MAINTAINED ON INDIVIDUALS.

* * * * *

MATCHING AGREEMENTS

(o) **MATCHING AGREEMENTS.—**

(1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency *or an agreement governing multiple agencies' specifying—*

(A) the purpose and legal authority for conducting the program;

* * * * *

TITLE 31—MONEY AND FINANCE

Subtitle III—Financial Management

CHAPTER 33—DEPOSITING, KEEPING, AND PAYING MONEY

Subchapter II—Payments

IMPROPER PAYMENTS INFORMATION ACT OF 2002. Act Nov. 26, 2002, P.L. 107-300, 116 Stat. 2350; July 22, 2010, P.L. 111-204, 2(a)–(f), 124 Stat. 2224, provides:

SECTION 1. SHORT TITLE.

* * * * *

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

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

(1) * * *

(2) * * *

(3) **RISK ASSESSMENTS.**

(A) * * *

(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—**

* * * * *

(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 frequency 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—

(i) review—

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

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

(ii) provide recommendations, for modifying any plans of the agency, 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) produce a statistically valid estimate, or an estimate that is otherwise appropriate using a methodology approved by the Director of the Office of Management and Budget, of the improper payments made by each program and activity; and

(2) include those estimates in the accompanying materials to the annual financial statement of the agency required under section 3515 of title 31, United States Code, or similar provision of law and applicable guidance of the Office of Management and Budget.

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

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

(2) in order to reduce improper payments to a level below which further expenditures to reduce improper payments would cost more than the amount such expenditures would save in prevented or recovered improper payments, a statement of whether the agency has what is needed with respect to—

(A) internal controls;

(B) human capital; and

(C) information systems and other infrastructure;

(3) if the agency does not have sufficient resources to establish and maintain effective internal controls under paragraph (2)(A), a description of the resources the agency has requested in its budget submission to establish and maintain such internal controls;

(4) program-specific and activity-specific improper payments reduction targets that have been approved by the Director of the Office of Management and Budget; and

(5) a description of the steps the agency has taken to ensure that agency managers, programs, and, where appropriate, States and localities are held accountable through annual performance appraisal criteria for—

(A) meeting applicable improper payments reduction targets; and

(B) establishing and maintaining sufficient internal controls, including an appropriate control environment, that effectively—

(i) prevent improper payments from being made;

and

(ii) promptly detect and recover improper payments that are made.

[(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 Pay-

ments 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)] (c)** a report on all actions the agency is taking to recover improper payments, including—

- (1) a discussion of the methods used by the agency to recover overpayments;
- (2) the amounts recovered, outstanding, and determined to not be collectable, including the percent such amounts represent of the total overpayments of the agency;
- (3) if a determination has been made that certain overpayments are not collectable, a justification of that determination;
- (4) an aging schedule of the amounts outstanding;
- (5) a summary of how recovered amounts have been disposed of;
- (6) a discussion of any conditions giving rise to improper payments and how those conditions are being resolved; and
- (7) if the agency has determined under section 2(h) of the Improper Payments Elimination and Recovery Act of 2010 (31 U.S.C. 3321 note) that performing recovery audits for any applicable program or activity is not cost-effective, a justification for that determination.

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

(1) **REPORT.**—Each fiscal year the Director of the Office of Management and Budget shall submit a report with respect to the preceding fiscal year on actions agencies have taken to report information regarding improper payments and actions to recover improper overpayments to—

- (A) the Committee on Homeland Security and Governmental Affairs of the Senate; and
- (B) the Committee on Oversight and Government Reform of the House of Representatives.

(2) **CONTENTS.**—Each report under this subsection shall include—

- (A) a summary of the reports of each agency on improper payments and recovery actions submitted under this section;
- (B) an identification of the compliance status of each agency to which this Act applies;
- (C) governmentwide improper payment reduction targets; and
- (D) a discussion of progress made towards meeting governmentwide improper payment reduction targets.

[f] (g) DEFINITIONS.—In this section:

(1) **AGENCY.**—The term “agency” means an executive agency, as that term is defined in section 102 of title 31, United States Code.

(2) **IMPROPER PAYMENT.**—The term “improper payment”—

- (A) means 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; and
- (B) includes any payment to an ineligible recipient, any payment for an ineligible good or service, any duplicate

payment, any payment for a good or service not received (except for such payments where authorized by law), and any payment that does not account for credit for applicable discounts.

(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, 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.

(4) PAYMENT FOR AN INELIGIBLE GOOD OR SERVICE.—The term “payment for an ineligible good or service” shall include a payment for any good or service that is rejected under any provision of any contract, grant, lease, cooperative agreement, or any other funding mechanism.

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

(1) IN GENERAL.—Not later than 6 months after the date of enactment of the Improper Payments Elimination and Recovery Act of 2010 [enacted July 22, 2010], the Director of the Office of Management and Budget shall prescribe guidance for agencies to implement the requirements of this section. The guidance shall not include any exemptions to such requirements not specifically authorized by this section.

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

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

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

* * * * *

RECOVERY AUDITS.—Act July 22, 2010, P.L. 111–204, 2(h), 124 Stat. 2228, provides:

(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).*

* * * * *

COMPLIANCE.—Act July 22, 2010, P.L. 111–204, 3, 124 Stat. 2232, provides:

(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) * * *

(B) * * *

(C) if required, publishes improper payments estimates for all programs and activities identified under section **2(b)** 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)** 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)** 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)** 2(c) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note).

