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2^D SESSION

S. 1409

IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2012

Referred to the Committee on Oversight and Government Reform

AN ACT

To intensify efforts to identify, prevent, and recover payment error, waste, fraud, and abuse within Federal spending.

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

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. DEFINITIONS.**

5 In this Act—

6 (1) the term “agency” means an executive
7 agency as that term is defined under section 102 of
8 title 31, United States Code; and

9 (2) the term “improper payment” has the
10 meaning given that term in section 2(g) of the Im-
11 proper Payments Information Act of 2002 (31
12 U.S.C. 3321 note), as redesignated by section
13 3(a)(1) of this Act.

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

16 (a) IN GENERAL.—Section 2 of the Improper Pay-
17 ments Information Act of 2002 (31 U.S.C. 3321 note) is
18 amended—

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

21 (2) by inserting after subsection (a) the fol-
22 lowing:

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

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

4 “(A) identify a list of high-priority Federal
5 programs for greater levels of oversight and re-
6 view—

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

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

12 “(B) in coordination with the agency re-
13 sponsible for administering the high-priority
14 program, establish annual targets and semi-an-
15 nual or quarterly actions for reducing improper
16 payments associated with each high-priority
17 program.

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

20 “(A) IN GENERAL.—Subject to Federal
21 privacy policies and to the extent permitted by
22 law, each agency with a program identified
23 under paragraph (1)(A) on an annual basis
24 shall submit to the Inspector General of that
25 agency, and make available to the public (in-

1 including availability through the Internet), a re-
2 port on that program.

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

5 “(i) shall describe—

6 “(I) any action the agency—

7 “(aa) has taken or plans to
8 take to recover improper pay-
9 ments; and

10 “(bb) intends to take to pre-
11 vent future improper payments;
12 and

13 “(ii) shall not include any referrals
14 the agency made or anticipates making to
15 the Department of Justice, or any informa-
16 tion provided in connection with such re-
17 ferrals.

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

22 “(D) AVAILABILITY OF INFORMATION TO
23 INSPECTOR GENERAL.—Subparagraph (B)(ii)
24 shall not prohibit any referral or information

1 being made available to an Inspector General as
2 otherwise provided by law.

3 “(E) ASSESSMENT AND RECOMMENDA-
4 TIONS.—The Inspector General of each agency
5 that submits a report under this paragraph
6 shall, for each program of the agency that is
7 identified under paragraph (1)(A)—

8 “(i) review—

9 “(I) the assessment of the level
10 of risk associated with the program,
11 and the quality of the improper pay-
12 ment estimates and methodology of
13 the agency relating to the program;
14 and

15 “(II) the oversight or financial
16 controls to identify and prevent im-
17 proper payments under the program;
18 and

19 “(ii) submit to Congress recommenda-
20 tions, which may be included in another re-
21 port submitted by the Inspector General to
22 Congress, for modifying any plans of the
23 agency relating to the program, including
24 improvements for improper payments de-
25 termination and estimation methodology.”;

1 (3) in subsection (d) (as redesignated by para-
2 graph (1) of this subsection), by striking “subsection
3 (b)” each place that term appears and inserting
4 “subsection (e)”;

5 (4) in subsection (e) (as redesignated by para-
6 graph (1) of this subsection), by striking “subsection
7 (b)” and inserting “subsection (c)”; and

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

12 (b) IMPROVED ESTIMATES.—

13 (1) IN GENERAL.—Not later than 180 days
14 after the date of enactment of this Act, the Director
15 of the Office of Management and Budget shall pro-
16 vide guidance to agencies for improving the esti-
17 mates of improper payments under the Improper
18 Payments Information Act of 2002 (31 U.S.C. 3321
19 note).

20 (2) GUIDANCE.—Guidance under this sub-
21 section shall—

22 (A) strengthen the estimation process of
23 agencies by setting standards for agencies to
24 follow in determining the underlying validity of

1 sampled payments to ensure amounts being
2 billed are proper; and

3 (B) instruct agencies to give the persons or
4 entities performing improper payments esti-
5 mates access to all necessary payment data, in-
6 cluding access to relevant documentation;

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

11 (D) require agencies to include all identi-
12 fied improper payments in the reported esti-
13 mate, regardless of whether the improper pay-
14 ment in question has been or is being recovered;

15 (E) include payments to employees, includ-
16 ing salary, locality pay, travel pay, purchase
17 card use, and other employee payments, as sub-
18 ject to risk assessment and, where appropriate,
19 improper payment estimation; and

20 (F) require agencies to tailor their correc-
21 tive actions for the high-priority programs iden-
22 tified under section 2(b)(1)(A) of the Improper
23 Payments Information Act of 2002 (31 U.S.C.
24 3321 note) to better reflect the unique proc-

1 esses, procedures, and risks involved in each
2 specific program.

3 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

4 The Improper Payments Elimination and Recovery Act of
5 2010 (Public Law 111–204; 124 Stat. 2224) is amend-
6 ed—

7 (1) in section 2(h)(1) (31 U.S.C. 3321 note), by
8 striking “section 2(f)” and all that follows and in-
9 serting “section 2(g) of the Improper Payments In-
10 formation Act of 2002 (31 U.S.C. 3321 note).”; and

11 (2) in section 3(a) (31 U.S.C. 3321 note)—

12 (A) in paragraph (1), by striking “section
13 2(f)” and all that follows and inserting “section
14 2(g) of the Improper Payments Information Act
15 of 2002 (31 U.S.C. 3321 note).”; and

16 (B) in paragraph (3)—

17 (i) by striking “section 2(b)” each
18 place it appears and inserting “section
19 2(c)”; and

20 (ii) by striking “section 2(c)” each
21 place it appears and inserting “section
22 2(d)”.

23 **SEC. 4. IMPROPER PAYMENTS INFORMATION.**

24 Section 2(a)(3)(A)(ii) of the Improper Payments In-
25 formation Act of 2002 (31 U.S.C. 3321 note) is amended

1 by striking “with respect to fiscal years following Sep-
2 tember 30th of a fiscal year beginning before fiscal year
3 2013 as determined by the Office of Management and
4 Budget” and inserting “with respect to fiscal year 2014
5 and each fiscal year thereafter”.

6 **SEC. 5. DO NOT PAY INITIATIVE.**

7 (a) PREPAYMENT AND PREAWARD PROCEDURES.—

8 (1) IN GENERAL.—Each agency shall review
9 prepayment and preaward procedures and ensure
10 that a thorough review of available databases with
11 relevant information on eligibility occurs to deter-
12 mine program or award eligibility and prevent im-
13 proper payments before the release of any Federal
14 funds.

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

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

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

23 (C) The Debt Check Database of the De-
24 partment of the Treasury.

1 (D) The Credit Alert System or Credit
2 Alert Interactive Voice Response System of the
3 Department of Housing and Urban Develop-
4 ment.

5 (E) The List of Excluded Individuals/Enti-
6 ties of the Office of Inspector General of the
7 Department of Health and Human Services.

8 (b) DO NOT PAY INITIATIVE.—

9 (1) ESTABLISHMENT.—There is established the
10 Do Not Pay Initiative which shall include—

11 (A) use of the databases described under
12 subsection (a)(2); and

13 (B) use of other databases designated by
14 the Director of the Office of Management and
15 Budget in consultation with agencies and in ac-
16 cordance with paragraph (2).

17 (2) OTHER DATABASES.—In making designa-
18 tions of other databases under paragraph (1)(B), the
19 Director of the Office of Management and Budget
20 shall—

21 (A) consider any database that substan-
22 tially assists in preventing improper payments;
23 and

1 (B) provide public notice and an oppor-
2 tunity for comment before designating a data-
3 base under paragraph (1)(B).

4 (3) ACCESS AND REVIEW BY AGENCIES.—For
5 purposes of identifying and preventing improper
6 payments, each agency shall have access to, and use
7 of, the Do Not Pay Initiative to verify payment or
8 award eligibility in accordance with subsection (a)
9 when the Director of the Office of Management and
10 Budget determines the Do Not Pay Initiative is ap-
11 propriately established for the agency.

12 (4) PAYMENT OTHERWISE REQUIRED.—When
13 using the Do Not Pay Initiative, an agency shall rec-
14 ognize that there may be circumstances under which
15 the law requires a payment or award to be made to
16 a recipient, regardless of whether that recipient is
17 identified as potentially ineligible under the Do Not
18 Pay Initiative.

19 (5) ANNUAL REPORT.—The Director of the Of-
20 fice of Management and Budget shall submit to
21 Congress an annual report, which may be included
22 as part of another report submitted to Congress by
23 the Director, regarding the operation of the Do Not
24 Pay Initiative, which shall—

1 (A) include an evaluation of whether the
2 Do Not Pay Initiative has reduced improper
3 payments or improper awards; and

4 (B) provide the frequency of corrections or
5 identification of incorrect information.

6 (c) DATABASE INTEGRATION PLAN.—Not later than
7 60 days after the date of enactment of this Act, the Direc-
8 tor of the Office of Management and Budget shall provide
9 to the Congress a plan for—

10 (1) inclusion of other databases on the Do Not
11 Pay Initiative;

12 (2) to the extent permitted by law, agency ac-
13 cess to the Do Not Pay Initiative; and

14 (3) the multilateral data use agreements de-
15 scribed under subsection (e).

16 (d) INITIAL WORKING SYSTEM.—

17 (1) ESTABLISHMENT.—Not later than 90 days
18 after the date of enactment of this Act, the Director
19 of the Office of Management and Budget shall es-
20 tablish a working system for prepayment and
21 preaward review that includes the Do Not Pay Ini-
22 tiative as described under this section.

23 (2) WORKING SYSTEM.—The working system
24 established under paragraph (1)—

1 (A) may be located within an appropriate
2 agency;

3 (B) shall include not less than 3 agencies
4 as users of the system; and

5 (C) shall include investigation activities for
6 fraud and systemic improper payments detec-
7 tion through analytic technologies and other
8 techniques, which may include commercial data-
9 base use or access.

10 (3) APPLICATION TO ALL AGENCIES.—Not later
11 than June 1, 2013, each agency shall review all pay-
12 ments and awards for all programs of that agency
13 through the system established under this sub-
14 section.

15 (e) FACILITATING DATA ACCESS BY FEDERAL AGEN-
16 CIES AND OFFICES OF INSPECTORS GENERAL FOR PUR-
17 POSES OF PROGRAM INTEGRITY.—

18 (1) DEFINITION.—In this subsection, the term
19 “Inspector General” means an Inspector General de-
20 scribed in subparagraph (A), (B), or (I) of section
21 11(b)(1) of the Inspector General Act of 1978 (5
22 U.S.C. App.).

23 (2) COMPUTER MATCHING BY FEDERAL AGEN-
24 CIES FOR PURPOSES OF INVESTIGATION AND PRE-
25 VENTION OF IMPROPER PAYMENTS AND FRAUD.—

1 (A) IN GENERAL.—Except as provided in
2 this paragraph, in accordance with section 552a
3 of title 5, United States Code (commonly known
4 as the Privacy Act of 1974), each Inspector
5 General and the head of each agency may enter
6 into computer matching agreements that allow
7 ongoing data matching (which shall include
8 automated data matching) in order to assist in
9 the detection and prevention of improper pay-
10 ments.

11 (B) REVIEW.—Not later than 60 days
12 after a proposal for an agreement under sub-
13 paragraph (A) has been presented to a Data In-
14 tegrity Board established under section 552a(u)
15 of title 5, United States Code, for consider-
16 ation, the Data Integrity Board shall respond
17 to the proposal.

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

20 (i) shall have a termination date of
21 less than 3 years; and

22 (ii) during the 3-month period ending
23 on the date on which the agreement is
24 scheduled to terminate, may be renewed by

1 the agencies entering the agreement for
2 not more than 3 years.

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

12 (E) COST-BENEFIT ANALYSIS.—A jus-
13 tification under section 552a(o)(1)(B) of title 5,
14 United States Code, relating to an agreement
15 under subparagraph (A) is not required to con-
16 tain a specific estimate of any savings under
17 the computer matching agreement.

18 (F) GUIDANCE BY THE OFFICE OF MAN-
19 AGEMENT AND BUDGET.—Not later than 6
20 months after the date of enactment of this Act,
21 and in consultation with the Council of Inspec-
22 tors General on Integrity and Efficiency, the
23 Secretary of Health and Human Services, the
24 Commissioner of Social Security, and the head

1 of any other relevant agency, the Director of
2 the Office of Management and Budget shall—

3 (i) issue guidance for agencies regard-
4 ing implementing this paragraph, which
5 shall include standards for—

6 (I) reimbursement of costs, when
7 necessary, between agencies;

8 (II) retention and timely destruc-
9 tion of records in accordance with sec-
10 tion 552a(o)(1)(F) of title 5, United
11 States Code;

12 (III) prohibiting duplication and
13 redisclosure of records in accordance
14 with section 552a(o)(1)(H) of title 5,
15 United States Code;

16 (ii) review the procedures of the Data
17 Integrity Boards established under section
18 552a(u) of title 5, United States Code, and
19 develop new guidance for the Data Integ-
20 rity Boards to—

21 (I) improve the effectiveness and
22 responsiveness of the Data Integrity
23 Boards; and

24 (II) ensure privacy protections in
25 accordance with section 552a of title

1 5, United States Code (commonly
2 known as the Privacy Act of 1974);
3 and

4 (III) establish standard matching
5 agreements for use when appropriate;
6 and

7 (iii) establish and clarify rules regard-
8 ing what constitutes making an agreement
9 entered under subparagraph (A) available
10 upon request to the public for purposes of
11 section 552a(o)(2)(A)(ii) of title 5, United
12 States Code, which shall include requiring
13 publication of the agreement on a public
14 website.

15 (G) CORRECTIONS.—The Director of the
16 Office of Management and Budget shall estab-
17 lish procedures providing for the correction of
18 data in order to ensure—

19 (i) compliance with section 552a(p) of
20 title 5, United States Code; and

21 (ii) that corrections are made in any
22 Do Not Pay Initiative database and in any
23 relevant source databases designated by
24 the Director of the Office of Management
25 and Budget under subsection (b)(1).

1 (H) COMPLIANCE.—The head of each
2 agency, in consultation with the Inspector Gen-
3 eral of the agency, shall ensure that any infor-
4 mation provided to an individual or entity
5 under this subsection is provided in accordance
6 with protocols established under this subsection.

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

11 (f) DEVELOPMENT AND ACCESS TO A DATABASE OF
12 INCARCERATED INDIVIDUALS.—Not later than 1 year
13 after the date of enactment of this Act, the Attorney Gen-
14 eral shall submit to Congress recommendations for in-
15 creasing the use of, access to, and the technical feasibility
16 of using data on the Federal, State, and local conviction
17 and incarceration status of individuals for purposes of
18 identifying and preventing improper payments by Federal
19 agencies and programs and fraud.

20 (g) PLAN TO CURB FEDERAL IMPROPER PAYMENTS
21 TO DECEASED INDIVIDUALS BY IMPROVING THE QUALITY
22 AND USE BY FEDERAL AGENCIES OF THE SOCIAL SECUR-
23 ITY ADMINISTRATION DEATH MASTER FILE.—

24 (1) ESTABLISHMENT.—In conjunction with the
25 Commissioner of Social Security and in consultation

1 with relevant stakeholders that have an interest in
2 or responsibility for providing the data, and the
3 States, the Director of the Office of Management
4 and Budget shall establish a plan for improving the
5 quality, accuracy, and timeliness of death data main-
6 tained by the Social Security Administration, includ-
7 ing death information reported to the Commissioner
8 under section 205(r) of the Social Security Act (42
9 U.S.C. 405(r)).

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

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

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

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

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

1 (E) address improper payments made by
2 agencies to deceased individuals as part of Fed-
3 eral retirement programs.

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

9 **SEC. 6. IMPROVING RECOVERY OF IMPROPER PAYMENTS.**

10 (a) DEFINITION.—In this section, the term “recovery
11 audit” means a recovery audit described under section
12 2(h) of the Improper Payments Elimination and Recovery
13 Act of 2010.

14 (b) REVIEW.—The Director of the Office of Manage-
15 ment and Budget shall determine—

16 (1) current and historical rates and amounts of
17 recovery of improper payments (or, in cases in which
18 improper payments are identified solely on the basis
19 of a sample, recovery rates and amounts estimated
20 on the basis of the applicable sample), including a
21 list of agency recovery audit contract programs and
22 specific information of amounts and payments recov-
23 ered by recovery audit contractors; and

