II

117TH CONGRESS
1ST SESSION

S. 3221

To reduce improper payments and eliminate waste in Federal programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 2021

Mr. BRAUN introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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A BILL

To reduce improper payments and eliminate waste in Federal programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘‘IRS Improper Payments Act’’.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that when the Federal Government makes payments to individuals and businesses as beneficiaries, grantees, or contractors, or on behalf of beneficiaries, of Federal programs, the Federal

Government must make every effort to confirm that the right recipient is receiving the right payment for the right reason at the right time.

(b) PURPOSE.—The purpose of this Act is to—

(1) reduce improper payments in the major programs administered by the Federal Government—

(A) by intensifying efforts to eliminate payment error, waste, fraud, and abuse in those programs; and

(B) continuing to ensure that Federal programs serve and provide access to the intended beneficiaries of those programs;

(2) adopt a comprehensive set of policies, including—

(A) transparency and public scrutiny of significant improper payments throughout the Federal Government;

(B) a focus on identifying and eliminating the highest improper payments;

(C) accountability for reducing improper payments among agencies and officials of agencies; and

(D) coordinated action by the Federal Government and State and local governments in identifying and eliminating improper payments; and

(3) protect access to Federal programs by their intended beneficiaries.

SEC. 3. TITLE 31 AMENDMENTS.

(a) IN GENERAL.—Subchapter IV of chapter 33 of title 31, United States Code, is amended—

(1) in section 3351—

(A) by redesignating paragraphs (4), (5), (6), (7), and (8) as paragraphs (5), (6), (7), (8), and (10), respectively;

(B) by inserting after paragraph (3) the following:

"(5) HIGH-PRIORITY PROGRAM.—The term 'high-priority program' means a Federal program identified by the Director of the Office of Management and Budget under section 3359(a)(1)."; and

(C) by inserting after paragraph (8), as so redesignated, the following:

"(9) HIGH-PRIORITY PROGRAM REDUCTION TARGET.—The term 'high-priority program reduction target' means a target for reducing improper payments associated with a high-priority program under section 3359(a)(2)."; and

(2) by adding at the end the following:

"§ 3359. Transparency and public participation

"(a) HIGH PRIORITY PROGRAMS.—Not later than 90 days after the date of enactment of this section, the Director of the Office of Management and Budget shall—

"(1) identify Federal programs in which the highest dollar value or majority of Government-wide improper payments occur;

"(2) establish, in coordination with the head of each executive agency responsible for administering a high-priority program—

"(A) annual targets for reducing improper payments associated with the high-priority program; or

"(B) if a target described in subparagraph (A) exists as of the date of enactment of this Act, supplemental targets for reducing improper payments associated with the high-priority program; and

"(3) issue Government-wide guidance on the implementation of this Act, including procedures for—

"(A) identifying and publicizing the list of entities described in subsection (c)(2)(E); and

"(B) prior to publication, administratively appealing the decision to publish the identity of those entities.

"(b) WORKING GROUP.—

"(1) IN GENERAL.—Not later than 90 days after the date of enactment of this section, the Director of the Office of Management and Budget shall establish a working group to be known as the 'High Priority Program Working Group' (referred to in this section as the 'Working Group').

"(2) MEMBERS.—The Working Group shall consist of officials of the Federal Government and State and local governments.

"(3) RECOMMENDATIONS.—Not later than 180 days after the date of enactment of this section, the Working Group, in coordination with Council of the Inspectors General on Integrity and Efficiency, shall submit to the Director of the Office of Management and Budget recommendations designed to improve the measurement by the Federal Government of access to Federal programs by the intended beneficiaries of those programs.

"(c) PUBLISHED HIGH-PRIORITY PROGRAM INFORMATION.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, and annually thereafter, the Secretary of the Treasury, in coordination with the Attorney General and the Director of the Office of Management and Budget, shall publish on the internet information about improper payments under high-priority programs.

"(2) CONTENTS.—The information published under paragraph (1) shall include, subject to Federal privacy policies and to the extent permitted by law—

"(A) the names of the accountable officials designated under section 3360(a);

"(B) rates and amounts as of the date of enactment of this section, and historical rates and amounts, of improper payments in Federal programs of the Internal Revenue Service, including, if known and appropriate, the causes of the improper payments;

"(C)(i) rates and amounts as of the date of enactment of this section, and historical rates and amounts, of the recovery of improper payments, where appropriate; or

"(ii) for high-priority programs in which improper payments are identified solely on the basis of a sample, rates and amounts of the recovery of improper payments estimated on the basis of the applicable sample;

"(D) high-priority program reduction targets, where appropriate; and

"(E) the entities that—

"(i) have received the greatest amount of unreturned improper payments; and

"(ii) in Federal programs in which improper payments are identified solely on the basis of a sample, have received the greatest amount of outstanding improper payments in the applicable sample.

"(3) MEASUREMENTS.—The Secretary of the Treasury may include in the information published under paragraph (1) any measurements included in the recommendations of the Working Group submitted under subsection (b)(3).

"(4) PROHIBITION.—The information described in paragraph (2)(E) may not include information relating to any referrals the executive agency has made or anticipates making to the Attorney General or any information provided in connection with those referrals.

"(d) COLLECTING INFORMATION FROM THE PUBLIC.—Not later than 180 days after the date of enactment of this section, the Secretary of the Treasury, in coordination with the Attorney General and the Director of the

Office of Management and Budget and in consultation with the Council of the Inspectors General on Integrity and Efficiency, shall establish a central internet-based method to collect from the public information relating to suspected incidents of waste, fraud, and abuse by an entity receiving Federal funds that have led or may lead to improper payments by the Federal Government.

"(e) LINKS.—The head of each executive agency shall prominently display on the homepage of the website of the executive agency a link to internet-based resources for addressing improper payments, including the information published under subsection (c)(1) and the internet-based method established under subsection (d).

"§ 3360. Agency accountability and coordination

"(a) ACCOUNTABLE OFFICIALS.—Not later than 120 days after the date of enactment of this section, the head of each executive agency that administers a high-priority program shall designate a Senate-confirmed official of the executive agency to be accountable for meeting the high-priority program reduction targets of the executive agency without unduly burdening access to the high-priority program and participation by eligible beneficiaries.

"(b) SECOND OFFICIAL.—If an executive agency that administers a high-priority program for which the majority of payments are administered under a single component of the executive agency, the head of the executive agency shall designate an official of that component, who shall—

"(1) be responsible for program integrity activities; and

"(2) as appropriate, consolidate and coordinate each program integrity activity of the component.

"(c) REPORT.—Not later than 180 days after the date of enactment of this section, and annually thereafter, each executive agency official who is designated by the Director of the Office of Management and Budget under subsection (a) or otherwise shall provide the inspector general of the executive agency served by the official a report that includes—

"(1) the methodology of the executive agency for identifying and measuring improper payments by each high-priority program of the executive agency;

"(2) the plans of the executive agency and supporting analysis for meeting high-priority program reduction targets; and

"(3) the plans of the executive agency and supporting analysis for ensuring that initiatives undertaken in accordance with this subchapter do not unduly burden program access and participation by eligible beneficiaries.

"(d) DUTIES OF INSPECTOR GENERAL.—Annually, the inspector general shall, with respect to each high-priority program of the executive agency—

"(1) assess the level of risk associated with the program;

"(2) determine the extent of oversight warranted; and

"(3) provide the head of the executive agency with recommendations, if any, for modifying the methodology, improper payment reduction plans, or program access and participation plans of the executive agency.

"(e) AGENCY FAILURE.—

"(1) IN GENERAL.—If an executive agency fails to meet the high-priority program reduction targets of the executive agency or implement the plans described in subsection (c)(3) for not less than 2 consecutive years, the official of the executive agency designated under subsection (a) shall submit to the head of the executive agency, the inspector general of the executive agency, and chief financial officer of the executive agency a report that—

"(A) describe the likely causes of the failure; and

"(B) proposes a remedial plan.

"(2) Review.—Annually, the head of an executive agency described in paragraph (1) shall, with respect to a remedial plan proposed under paragraph (1)(B)—

"(A) review the remedial plan; and

"(B) in consultation with the inspector general and chief financial officer of the executive agency, forward the remedial plan and any additional comments and analysis to the Director of the Office of Management and Budget.

"(f) CFOC Recommendations.—

"(1) In general.—Not later than 180 days after the date of enactment of this section, the Chief Financial Officers Council, in consultation with the Council of the Inspectors General on Integrity and Efficiency, the Attorney General, and Federal program experts, shall submit to the Director of the Office of Management and Budget and the Secretary of the Treasury recommendations on actions, including actions relating to forensic accounting and audits, agencies should take to more effectively tailor methodologies for identifying and measuring improper payments to Federal programs, or components of Federal programs, in which improper payments are most likely to occur.

"(2) CONTENTS.—The recommendations submitted under paragraph (1) shall address the manner in which the recommended actions would affect program access and participation by eligible beneficiaries.

"(g) RECOMMENDATIONS TO REDUCE IMPROPER PAYMENTS.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary of the Treasury and the Director of the Office of Management and Budget, in consultation with the Council of the Inspectors General on Integrity and Efficiency, the Attorney General, and Federal program experts, shall submit to the President recommendations for actions designed to reduce improper payments by improving information sharing among agencies and Federal programs, and when applicable, State and local governments and other stakeholders.

"(2) CONTENTS.—The recommendations submitted under paragraph (1) shall—

"(A) address the ways in which information sharing may improve eligibility verification and pre-payment scrutiny;

"(B) identify legal or regulatory impediments to effective information sharing; and

"(C) address the manner in which the recommended actions would affect Federal program access and participation by eligible beneficiaries.

"(h) REPORT.—

"(1) IN GENERAL.—Subject to Federal privacy policies and to the extent permitted by law, not later than 180 days after the date of enactment of this section, and not less frequently than quarterly thereafter, the head of each executive agency shall submit to the inspector general of the executive agency and the Council of the Inspectors General on Integrity and Efficiency, and make available to the public, a report on any high-dollar improper payments identified by the executive agency.

"(2) CONTENTS.—The report required under paragraph (1)—

"(A) shall describe any actions that the executive agency—

"(i) has taken or plans to take to recover improper payments; and "(ii) intends to take to prevent improper payments from occurring in the future; and

"(B) may not include any referrals the executive agency made or anticipates making to the Attorney General or any information provided in connection with those referrals.

"(3) REVIEW.—Not later than 60 days after the date on which the head of an executive agency submits a report under paragraph (1), the inspector general of each executive agency and the Council of the Inspectors General on Integrity and Efficiency shall—

"(A) assess the level of risk associated with the Federal program under which a high-dollar improper payment described in paragraph (1) was made;

"(B) determine the extent of oversight of the Federal program described in subparagraph (A) that is warranted; and

"(C) provide the head of the executive agency with recommendations, if any, for modifying the plans of the executive agency.

"§ 3361. Enhanced focus on contractors and working with State and local stakeholders

"(a) ENHANCED FOCUS ON CONTRACTORS.—Not later than 180 days after the date of enactment of this section, the Federal Acquisition Regulatory Council, in coordination with the Director of the Office of Management and Budget and in consultation with the National Procurement Fraud Task Force (or its successor group), the Council of the Inspectors General on Integrity and Efficiency, and appropriate executive agency officials, shall recommend to the President actions designed to enhance contractor accountability for improper payments, which may include subjecting contractors to debarment, suspension, financial penalties, and identification through a public internet website, subject to Federal privacy policies and to the extent permitted by law and where the identification would not interfere with or compromise an ongoing criminal or civil investigation, for knowingly failing timely to disclose credible evidence of significant overpayments received under Federal contracts.

"(b) WORKING GROUP FOR AUDITS.—

"(1) IN GENERAL.—Not later than 30 days after the date of enactment of this section, the Director of the Office of Management and Budget shall establish a working group to be known as the 'Auditing Working Group'.

"(2) MEMBERS.—The working group established under paragraph (1) shall consist of officials of the Federal Government and elected officials of State and local governments.

"(3) CHAIR.—The Director of the Office of Management and Budget may designate an appropriate official to serve as the Chair of the working group established under paragraph (1) to convene the meetings and direct the work of the working group.

"(4) DUTIES.—Not later than 180 days after the date of enactment of this section, the working group established under paragraph (1), in coordination with the Council of the Inspectors General on Integrity and Efficiency, shall submit to the Director of the Office of Management and Budget recommendations designed to improve the effectiveness of single audits of State and local governments and nonprofit organizations that expend Federal funds.

"(5) CONTENTS.—The recommendations required under paragraph (4) shall address—

"(A) the effectiveness of the audits described in that paragraph in identifying improper payments; and

"(B) opportunities to streamline or eliminate single audit requirements in situations in which the value of those requirements is minimal.

"(c) WORKING GROUP FOR ACCOUNTABILITY.—

"(1) IN GENERAL.—Not later than 30 days after the date of enactment of this section, the Director of the Office of Management and Budget shall establish a working group, which may be a component of the working group established under subsection (b), to be known as the 'Accountability Working Group'.

"(2) MEMBERS.—The working group established under paragraph (1) shall consist of officials of the Federal Government and elected officials of State and local governments.

"(3) CHAIR.—The Director of the Office of Management and Budget may designate an appropriate official to serve as the Chair of the working group established under paragraph (1) to convene the meetings and direct the work of the working group.

"(4) DUTIES.—Not later than 180 days after the date of enactment of this section, the working group established under paragraph (1), in consultation with the Council of the Inspectors General on Integrity and Efficiency, shall submit to the Director of the Office of Management and Budget recommendations for administrative actions designed to improve the incentives and accountability of State and local governments and other entities receiving Federal funds for reducing improper payments.

"§ 3362. Policy proposals

"(a) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Director of the Office of Management and Budget, in consultation with the heads of appropriate agencies and the Council of the Inspectors General on Integrity and Efficiency, shall develop policy recommendations, including potential legislative proposals, designed to reduce improper payments, including improper payments caused by error, waste, fraud, and abuse, across Federal programs without compromising program access.

"(b) INCLUSION.—The recommendations developed under subsection (a) shall be included, as appropriate, in the budget of the President under section 1105(a) of title 31, United States Code for fiscal year 2023 and each fiscal year thereafter.".

(b) CLERICAL AMENDMENT.—The table of sections for subchapter IV of chapter 33 of title 31, United States Code, is amended by adding at the end the following:

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