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112TH CONGRESS
2D SESSION

H. R. 4053

[Report No. 112–698]

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 2012

Mr. TOWNS (for himself, Mr. PLATTS, Mr. SCHRADER, Mr. CONNOLLY of Virginia, Mr. ALTMIRE, Mr. BARROW, Mr. BISHOP of Georgia, Mr. BOREN, Mr. BOSWELL, Mr. CARDOZA, Mr. COOPER, Mr. DONNELLY of Indiana, Mr. HOLDEN, Mr. MATHESON, Mr. MCINTYRE, Mr. MICHAUD, Mr. PETERSON, Mr. ROSS of Arkansas, Mr. DAVID SCOTT of Georgia, Mr. SHULER, and Mr. THOMPSON of California) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

NOVEMBER 30, 2012

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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

[For text of introduced bill, see copy of bill as introduced on February 16, 2012]

A BILL

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

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 "Improper Payments Elimination and Recovery Improvement Act of 2012".

SEC. 2. DEFINITIONS.

In this Act—

(1) the term "agency" means an executive agency as that term is defined under section 102 of title 31, United States Code;

(2) the term "improper payment" has the meaning given that term in section 2(g) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note), as redesignated by section 3(a)(1) of this Act; and

(3) the term "State" means each State of the United States, the District of Columbia, each territory or possession of the United States, and each federally recognized Indian tribe.

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

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

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

(2) by inserting after subsection (a) the following:

"(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 rate 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 Budg-

et 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, for each program of the agency that is identified under paragraph (1)(A)—

"(i) review—

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

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

"(ii) submit to Congress recommendations, which may be included in another report submitted by the Inspector General to

Congress, for modifying any plans of the agency relating to the program, including improvements for improper payments determination and estimation methodology.";

(3) in subsection (d) (as redesignated by paragraph (1) of this subsection), by striking "subsection (b)" each place that term appears and inserting "subsection (c)";

(4) in subsection (e) (as redesignated by paragraph (1) of this subsection), by striking "subsection (b)" and inserting "subsection (c)"; and

(5) in subsection (g)(3) (as redesignated by paragraph (1) of this subsection), by inserting "or a Federal employee" after "non-Federal person or entity".

(b) IMPROVED ESTIMATES.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall provide guidance to agencies for improving the estimates of improper payments under the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note).

(2) GUIDANCE.—Guidance under this subsection shall—

(A) strengthen the estimation process of agencies by setting standards for agencies to fol-

low in determining the underlying validity of sampled payments to ensure amounts being billed, paid, or obligated for payment are proper;

(B) instruct agencies to give the persons or entities performing improper payments estimates access to all necessary payment data, including access to relevant documentation;

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

(D) require agencies to include all identified improper payments in the reported estimate, regardless of whether the improper payment in question has been or is being recovered;

(E) include payments to employees, including salary, locality pay, travel pay, purchase card use, and other employee payments, as subject to risk assessment and, where appropriate, improper payment estimation; and

(F) require agencies to tailor their corrective actions for the high-priority programs identified under section 2(b)(1)(A) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) to better reflect the unique processes,

procedures, and risks involved in each specific program.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—The Improper Payments Elimination and Recovery Act of 2010 (Public Law 111–204; 31 U.S.C. 3321 note.) is amended—

(1) in section 2(h)(1), by striking "section 2(f)" and all that follows and inserting "section 2(g) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note)."; and

(2) in section 3(a)—

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

(B) in paragraph (3)—

(i) by striking "section 2(b)" each place it appears and inserting "section 2(c)"; and

(ii) by striking "section 2(c)" each place it appears and inserting "section 2(d)".

SEC. 4. IMPROPER PAYMENTS INFORMATION.

Section 2(a)(3)(A)(ii) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) is amended by striking "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" and inserting "with respect to fiscal year 2014 and each fiscal year thereafter".

SEC. 5. DO NOT PAY INITIATIVE.

(a) PREPAYMENT AND PREAWARD PROCEDURES.—

(1) IN GENERAL.—Each agency shall review prepayment and preaward procedures and ensure that a thorough review of available databases with relevant information on eligibility occurs to determine program or award eligibility and prevent improper payments before the release of any Federal funds.

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

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

(B) The General Services Administration's Excluded Parties List System.

(C) The Debt Check Database of the Department of the Treasury.

(D) The Credit Alert System or Credit Alert Interactive Voice Response System of the Department of Housing and Urban Development.

(E) The List of Excluded Individuals/Entities of the Office of Inspector General of the Department of Health and Human Services.

(b) DO NOT PAY INITIATIVE.—

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

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

(B) use of other databases designated by the Director of the Office of Management and Budget in consultation with agencies and in accordance with paragraph (2).

(2) OTHER DATABASES.—In making designations of other databases under paragraph (1)(B), the Director of the Office of Management and Budget shall—

(A) consider any database that substantially assists in preventing improper payments; and

(B) provide public notice and an opportunity for comment before designating a database under paragraph (1)(B).

(3) ACCESS AND REVIEW BY AGENCIES.—For purposes of identifying and preventing improper payments, each agency shall have access to, and use of,

the Do Not Pay Initiative to verify payment or award eligibility in accordance with subsection (a) when the Director of the Office of Management and Budget determines the Do Not Pay Initiative is appropriately established for the agency.

(4) PAYMENT OTHERWISE REQUIRED.—When using the Do Not Pay Initiative, an agency shall recognize that there may be circumstances under which the law requires a payment or award to be made to a recipient, regardless of whether that recipient is identified as potentially ineligible under the Do Not Pay Initiative.

(5) ANNUAL REPORT.—The Director of the Office of Management and Budget shall submit to Congress an annual report, which may be included as part of another report submitted to Congress by the Director, regarding the operation of the Do Not Pay Initiative, which shall—

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

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

(c) DATABASE INTEGRATION PLAN.—Not later than 60 days after the date of enactment of this Act, the Director

of the Office of Management and Budget shall provide to the Congress a plan for—

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

(2) to the extent permitted by law, agency access to the Do Not Pay Initiative; and

(3) the data use agreements described under subsection (e)(2)(D).

(d) INITIAL WORKING SYSTEM.—

(1) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall establish a working system for prepayment and preaward review that includes the Do Not Pay Initiative as described under this section.

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

(A) may be located within an appropriate agency;

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

(C) shall include investigation activities for fraud and systemic improper payments detection through analytic technologies and other tech-

niques, which may include commercial database use or access.

(3) APPLICATION TO ALL AGENCIES.—Not later than June 1, 2013, each agency shall review all payments and awards for all programs of that agency through the system established under this subsection.

(e) FACILITATING DATA ACCESS BY FEDERAL AGENCIES AND OFFICES OF INSPECTORS GENERAL FOR PURPOSES OF PROGRAM INTEGRITY.—

(1) DEFINITION.—In this subsection, the term "Inspector General" means any Inspector General described in subparagraph (A), (B), or (I) of section 11(b)(1) of the Inspector General Act of 1978 (5 U.S.C. App.) and any successor Inspector General.

(2) COMPUTER MATCHING BY FEDERAL AGENCIES FOR PURPOSES OF INVESTIGATION AND PREVENTION OF IMPROPER PAYMENTS AND FRAUD.—

(A) IN GENERAL.—Except as provided in this paragraph, in accordance with section 552a of title 5, United States Code (commonly known as the Privacy Act of 1974), each Inspector General and the head of each agency may enter into computer matching agreements with other inspectors general and agency heads that allow ongoing data matching (which shall include auto-

mated data matching) in order to assist in the detection and prevention of improper payments.

(B) REVIEW.—Not later than 60 days after a proposal for an agreement under subparagraph (A) has been presented to a Data Integrity Board established under section 552a(u) of title 5, United States Code, for consideration, the Data Integrity Board shall respond to the proposal.

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

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

(ii) during the 3-month period ending on the date on which the agreement is scheduled to terminate, may be renewed by the agencies entering the agreement for not more than 3 years.

(D) MULTIPLE AGENCIES.—For purposes of this paragraph, section 552a(o)(1) of title 5, United States Code, shall be applied by substituting "between the source agency and the recipient agency or non-Federal agency or an agreement governing multiple agencies" for "between the source agency and the recipient agency

or non-Federal agency" in the matter preceding subparagraph (A).

(E) COST-BENEFIT ANALYSIS.—A justification under section 552a(o)(1)(B) of title 5, United States Code, relating to an agreement under subparagraph (A) is not required to contain a specific estimate of any savings under the computer matching agreement.

(3) GUIDANCE BY THE OFFICE OF MANAGEMENT AND BUDGET.—Not later than 6 months after the date of enactment of this Act, and in consultation with the Council of the Inspectors General on Integrity and Efficiency, the Secretary of Health and Human Services, the Commissioner of Social Security, and the head of any other relevant agency, the Director of the Office of Management and Budget shall—

(A) issue guidance for agencies regarding implementing this subsection, which shall include standards for—

(i) reimbursement of costs, when necessary, between agencies;

(ii) retention and timely destruction of records in accordance with section 552a(o)(1)(F) of title 5, United States Code; and

(iii) prohibiting duplication and re-disclosure of records in accordance with section 552a(o)(1)(H) of title 5, United States Code;

(B) review the procedures of the Data Integrity Boards established under section 552a(u) of title 5, United States Code, and develop new guidance for the Data Integrity Boards to—

(i) improve the effectiveness and responsiveness of the Data Integrity Boards;

(ii) ensure privacy protections in accordance with section 552a of title 5, United States Code (commonly known as the Privacy Act of 1974); and

(iii) establish standard matching agreements for use when appropriate; and

(C) establish and clarify rules regarding what constitutes making an agreement entered under paragraph (2)(A) available upon request to the public for purposes of section 552a(o)(2)(A)(ii) of title 5, United States Code, which shall include requiring publication of the agreement on a public website.

(4) CORRECTIONS.—The Director of the Office of Management and Budget shall establish procedures

providing for the correction of data in order to ensure—

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

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

(5) COMPLIANCE.—The head of each agency, in consultation with the Inspector General of the agency, shall ensure that any information provided to an individual or entity under this subsection is provided in accordance with protocols established under this subsection.

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

(f) DEVELOPMENT AND ACCESS TO A DATABASE OF INCARCERATED INDIVIDUALS.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall submit to Congress recommendations for increasing the use of, access to, and the technical feasibility of using data on the Federal, State, and local conviction and incarceration

status of individuals for purposes of identifying and preventing improper payments by Federal agencies and programs and fraud.

(g) PLAN TO CURB FEDERAL IMPROPER PAYMENTS TO DECEASED INDIVIDUALS BY IMPROVING THE QUALITY AND USE BY FEDERAL AGENCIES OF THE SOCIAL SECURITY ADMINISTRATION DEATH MASTER FILE.—

(1) ESTABLISHMENT.—In conjunction with the Commissioner of Social Security and in consultation with relevant stakeholders that have an interest in or responsibility for providing the data, and the States, the Director of the Office of Management and Budget shall establish a plan for improving the quality, accuracy, and timeliness of death data maintained by the Social Security Administration, including death information reported to the Commissioner under section 205(r) of the Social Security Act (42 U.S.C. 405(r)).

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

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

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

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

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

(E) address improper payments made by agencies to deceased individuals as part of Federal retirement programs.

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

SEC. 6. IMPROVING RECOVERY OF IMPROPER PAYMENTS.

(a) DEFINITION.—In this section, the term "recovery audit" means a recovery audit described under section 2(h) of the Improper Payments Elimination and Recovery Act of 2010 (31 U.S.C. 3301 note).

(b) REVIEW.—The Director of the Office of Management and Budget shall determine—

(1) current and historical rates and amounts of recovery of improper payments (or, in cases in which improper payments are identified solely on the basis

of a sample, recovery rates and amounts estimated on the basis of the applicable sample), including a list of agency recovery audit contract programs and specific information of amounts and payments recovered by recovery audit contractors; and

(2) targets for recovering improper payments, including specific information on amounts and payments recovered by recovery audit contractors.

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