

110TH CONGRESS
2D SESSION

S. 2583

To amend the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) in order to prevent the loss of billions in taxpayer dollars.

IN THE SENATE OF THE UNITED STATES

JANUARY 31, 2008

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

A BILL

To amend the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) in order to prevent the loss of billions in taxpayer dollars.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Improper Payments
5 Elimination and Recovery Act of 2008”.

6 **SEC. 2. IMPROPER PAYMENTS ELIMINATION AND RECOV-**
7 **ERY.**

8 (a) SUSCEPTIBLE PROGRAMS AND ACTIVITIES.—Sec-
9 tion 2 of the Improper Payments Information Act of 2002

1 (31 U.S.C. 3321 note) is amended by striking subsection
 2 (a) and inserting the following:

3 “(a) IDENTIFICATION OF SUSCEPTIBLE PROGRAMS
 4 AND ACTIVITIES.—

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

12 “(2) ANNUAL RISK ASSESSMENT.—

13 “(A) DEFINITION.—In this paragraph the
 14 term ‘significant’ means that improper pay-
 15 ments in the program or activity in the pre-
 16 ceding fiscal year exceeded—

17 “(i) 2.5 percent of all program or ac-
 18 tivity payments made during that fiscal
 19 year; or

20 “(ii) \$10,000,000.

21 “(B) RISK ASSESSMENT.—The review
 22 under paragraph (1) shall include a risk assess-
 23 ment that includes—

24 “(i) a systematic process for pro-
 25 ducing a statistically valid estimate of the

1 level of improper payments being made by
2 the agency; and
3 “(ii) an identification of the risks for
4 each program and activity resulting from
5 the estimates made under clause (i).”.

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

10 “(c) REPORTS ON ACTIONS TO REDUCE IMPROPER
11 PAYMENTS.—With respect to any program or activity of
12 an agency with estimated improper payments under sub-
13 section (b), the head of the agency shall provide with the
14 estimate under subsection (b) a report on what actions
15 the agency is taking to reduce the improper payments, in-
16 cluding—

17 “(1) a discussion of the causes of the improper
18 payments identified, actions planned or taken to cor-
19 rect those causes, and the planned or actual comple-
20 tion date of the actions taken to address those
21 causes;

22 “(2) in order to reduce improper payments to
23 minimal cost-effective levels, a statement of whether
24 the agency has—

1 “(A) the internal controls, including infor-
2 mation systems;

3 “(B) the human capital; and

4 “(C) other infrastructure the agency needs;

5 “(3) if the agency does not have the internal
6 controls, a description of the resources the agency
7 has requested in its budget submission to establish
8 the internal controls;

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

16 “(5) a statement of whether or not the agency
17 has—

18 “(A) conducted annual improper payment
19 risk assessments;

20 “(B) developed and implemented improper
21 payment control plans; and

22 “(C) implemented appropriate improper
23 payment detection, investigation, reporting, and
24 data collection procedures and processes.”.

1 (c) REPORTS ON RECOVERY ACTIONS AND GOVERN-
2 MENTWIDE REPORTING.—

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

6 (A) by redesignating subsections (d), (e),
7 and (f) as subsections (f), (g), and (h), respec-
8 tively; and

9 (B) by inserting after subsection (c) the
10 following:

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

19 “(1) the types of errors from which improper
20 payments resulted;

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

23 “(3) the amounts recovered, outstanding, and
24 determined to not be collectable; and

1 “(4) an aging schedule of the amounts out-
2 standing.

3 “(e) GOVERNMENTWIDE REPORTING OF IMPROPER
4 PAYMENTS.—

5 “(1) DEPARTMENT OF THE TREASURY.—The
6 Secretary of the Treasury shall include in each re-
7 port submitted under section 331(a) of title 31,
8 United States Code, the improper payment informa-
9 tion reported by the agencies on a governmentwide
10 basis.

11 “(2) OFFICE OF MANAGEMENT AND BUDGET.—
12 The Director of the Office of Management and
13 Budget shall—

14 “(A) coordinate with the Secretary of the
15 Treasury in the preparation of the information
16 to be reported under paragraph (1); and

17 “(B) prescribe regulations for—

18 “(i) the information required to be re-
19 ported; and

20 “(ii) a format of reporting such infor-
21 mation on a governmentwide basis to be
22 used by agencies.”.

23 (2) TECHNICAL AND CONFORMING AMEND-
24 MENT.—Section 331(a) of title 31, United States
25 Code, is amended—

1 (A) in paragraph (6), by striking “and”
 2 after the semicolon;

3 (B) in paragraph (7), by striking the pe-
 4 riod and inserting “; and”; and

5 (C) by adding at the end the following:

6 “(8) the improper payments information re-
 7 quired under section 2(e) of the Improper Payments
 8 Information Act of 2002 (31 U.S.C. 3321 note).”.

9 (d) DEFINITIONS.—Section 2 of the Improper Pay-
 10 ment Information Act of 2002 (31 U.S.C. 3321 note) is
 11 amended by striking subsection (g) (as redesignated by
 12 this section) and inserting the following:

13 “(g) DEFINITIONS.—In this section:

14 “(1) AGENCY.—The term ‘agency’ means an
 15 executive agency, as that term is defined in section
 16 102 of title 31, United States Code.

17 “(2) IMPROPER PAYMENT.—The term ‘im-
 18 proper payment’—

19 “(A) means any payment that should not
 20 have been made or that was made in an incor-
 21 rect amount (including overpayments and un-
 22 derpayments) under statutory, contractual, ad-
 23 ministrative, or other legally applicable require-
 24 ments; and

1 “(B) includes any payment to an ineligible
2 recipient, any payment for an ineligible good or
3 service, any duplicate payment, payments for
4 services not received, and any payment that
5 does not account for credit for applicable dis-
6 counts.

7 “(3) PAYMENT.—The term ‘payment’ means
8 any transfer or commitment for future transfer of
9 cash, in-kind benefits, goods, services, loans and loan
10 guarantees, insurance subsidies, and other items of
11 value between Federal agencies and their employees,
12 vendors, partners, and beneficiaries, and parties to
13 contracts, grants, leases, cooperative agreements, or
14 any other procurement mechanism, that is—

15 “(A) made by a Federal agency, a Federal
16 contractor, or a governmental or other organi-
17 zation administering a Federal program or ac-
18 tivity; and

19 “(B) derived from Federal funds or other
20 Federal resources or that will be reimbursed
21 from Federal funds or other Federal resources.

22 “(4) PAYMENT FOR AN INELIGIBLE GOOD OR
23 SERVICE.—The term ‘payment for an ineligible good
24 or service’ shall include a payment for any good or
25 service that is in violation of any provision of any

1 contract, grant, lease, cooperative agreement, or any
2 other procurement mechanism, including any provi-
3 sion relating to quantity, quality, or timeliness.”.

4 (e) GUIDANCE BY THE OFFICE OF MANAGEMENT
5 AND BUDGET.—Section 2 of the Improper Payments In-
6 formation Act of 2002 (31 U.S.C. 3321 note) is amended
7 by striking subsection (h) (as redesignated by this section)
8 and inserting the following:

9 “(h) GUIDANCE BY THE OFFICE OF MANAGEMENT
10 AND BUDGET.—

11 “(1) IN GENERAL.—Not later than 6 months
12 after the date of enactment of the Improper Pay-
13 ments Elimination and Recovery Act of 2008, the
14 Director of the Office of Management and Budget
15 shall prescribe updated guidance to implement and
16 provide for full compliance with the requirements of
17 this section. The guidance shall not include any ex-
18 emptions not specifically authorized by this section.

19 “(2) CONTENTS.—The updated guidance under
20 paragraph (1) shall prescribe—

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

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

4 (f) INTERNAL CONTROLS.—

5 (1) REPORT ON EFFECTIVENESS OF A-123 IM-
6 PLEMENTATION.—The President’s Council on Integ-
7 rity and Efficiency shall conduct a study of the ef-
8 fectiveness of implementation of the Office of Man-
9 agement and Budget’s Circular No. A-123 (revised),
10 Management’s Responsibility for Internal Control at
11 preventing improper payments or addressing internal
12 control problems that contribute to improper pay-
13 ments, and not later than 1 year after the date of
14 enactment of this Act, submit a report on the study
15 to—

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

18 (B) the Committee on Oversight and Gov-
19 ernment Reform of the House of Representa-
20 tives;

21 (C) the Director of the Office of Manage-
22 ment and Budget; and

23 (D) the Comptroller General.

24 (2) CONSULTATION AND COOPERATION.—The
25 President’s Council on Integrity and Efficiency shall

1 consult and cooperate with the committees and di-
2 rector described under paragraph (1) to ensure the
3 nature and scope of the study under paragraph (1)
4 will address the needs on those committees and the
5 Director of the Office of Management and Budget,
6 including how the implementation of Circular No.
7 A-123 (revised) has helped to identify, report, pre-
8 vent, and recover improper payments.

9 (3) DETERMINATION OF AGENCY READINESS
10 FOR OPINION ON INTERNAL CONTROL.—Not later
11 than 1 year after the date of enactment of the Im-
12 proper Payments Elimination and Recovery Act of
13 2008, the Director of the Office of Management and
14 Budget shall develop—

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

18 (B) criteria for an agency that has dem-
19 onstrated a stabilized, effective system of inter-
20 nal control over financial reporting, whereby the
21 agency would qualify for a multiyear cycle for
22 obtaining an audit opinion on internal control
23 over financial reporting, rather than an annual
24 cycle.

1 (g) RECOVERY AUDITS.—An agency with outlays of
 2 \$1,000,000 or more in any fiscal year shall conduct a re-
 3 covery audit (as that term is defined by the Director of
 4 the Office of Management and Budget under section 3561
 5 of title 31, United States Code) of all programs and activi-
 6 ties, if the agency determines that—

7 (1) conducting an internal recovery audit would
 8 be effective; or

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

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

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

23 (A) private contractors;

24 (B) agency employees;

25 (C) cross-servicing from other agencies; or

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

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

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

8 (B) the Committee on Oversight and Gov-
9 ernment Reform of the House of Representa-
10 tives; and

11 (C) the Comptroller General.

12 **SEC. 3. COMPLIANCE.**

13 (a) DEFINITIONS.—In this section:

14 (1) AGENCY.—The term “agency” has the
15 meaning given under section 2(f) of the Improper
16 Payments Information Act of 2002 (31 U.S.C. 3321
17 note) as redesignated by this Act.

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

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

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

1 (i) is in compliance with section 2(a)
2 the Improper Payments Information Act of
3 2002 (31 U.S.C. 3321 note); and

4 (ii) is included in the performance re-
5 port;

6 (C) publishes program specific improper
7 payments estimates for all programs and activi-
8 ties identified under section 2(b) of the Im-
9 proper Payments Information Act of 2002 (31
10 U.S.C. 3321 note) in the performance report;

11 (D) publishes programmatic corrective ac-
12 tion plans prepared under section 2(c) of the
13 Improper Payments Information Act of 2002
14 (31 U.S.C. 3321 note) that the agency may
15 have in the performance report;

16 (E) publishes Office of Management and
17 Budget approved improper payments reduction
18 targets in the performance report for each pro-
19 gram assessed to be at risk, and is determined
20 by the Office of Management and Budget to be
21 actively meeting such targets;

22 (F) publishes the compliance report under
23 subsection (c) in the performance report; and

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

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

5 (4) PERFORMANCE REPORT.—The term “per-
6 formance report” means the performance and ac-
7 countability report referred to under section 3516(b)
8 of title 31, United States Code, or a program per-
9 formance report under section 1116 of that title.

10 (b) ANNUAL COMPLIANCE REPORT BY OMB.—

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

14 (A) the compliance status of each agency
15 under this section; and

16 (B) the delinquent programs responsible
17 for that status.

18 (2) INCLUSION IN BUDGET SUBMISSION.—The
19 Director of Office of the Management and Budget
20 shall include the report described under paragraph
21 (1) in the annual budget submitted under section
22 1105 of title 31, United States Code.

23 (c) ANNUAL COMPLIANCE REPORT BY INSPECTOR
24 GENERAL.—

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

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

13 (3) INCLUSION IN PERFORMANCE REPORT.—
14 The head of each agency shall include the report of
15 the agency Inspector General described under para-
16 graph (1) in the performance report.

17 (d) REMEDIATION ASSISTANCE.—

18 (1) VOLUNTARY REMEDIATION ASSISTANCE.—If
19 an agency is determined by the agency Inspector
20 General not to be in compliance under subsection (c)
21 in a fiscal year, the head of the agency may transfer
22 funds from any available appropriations of that
23 agency for expenditure on intensified compliance for
24 any delinquent program (notwithstanding any appro-

1 priations transfer authority limitation in any other
2 provision of law).

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

11 (3) REMEDIATION RESCISSION.—

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

24 (B) CONTINUATION OF TRANSFERS.—The
25 head of an agency shall make transfers under

1 subparagraph (A) until the agency is deter-
2 mined to be in compliance under subsection (b).

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

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

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

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