

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 4053  
OFFERED BY MR. ISSA OF CALIFORNIA**

Strike all after the enacting clause and insert the following:

**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;

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; and

14 (3) the term “State” means each State of the  
15 United States, the District of Columbia, each terri-  
16 tory or possession of the United States, and each  
17 federally recognized Indian tribe.

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

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

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

8 (2) by inserting after subsection (a) the fol-  
9 lowing:

10 “(b) IMPROVING THE DETERMINATION OF IMPROPER  
11 PAYMENTS.—

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

15 “(A) identify a list of high-priority Federal  
16 programs for greater levels of oversight and re-  
17 view—

18 “(i) in which the highest dollar value  
19 or highest rate of improper payments  
20 occur; or

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

23 “(B) in coordination with the agency re-  
24 sponsible for administering the high-priority  
25 program, establish annual targets and semi-an-  
26 nual or quarterly actions for reducing improper

1 payments associated with each high-priority  
2 program.

3 “(2) REPORT ON HIGH-PRIORITY IMPROPER  
4 PAYMENTS.—

5 “(A) IN GENERAL.—Subject to Federal  
6 privacy policies and to the extent permitted by  
7 law, each agency with a program identified  
8 under paragraph (1)(A) on an annual basis  
9 shall submit to the Inspector General of that  
10 agency, and make available to the public (in-  
11 cluding availability through the Internet), a re-  
12 port on that program.

13 “(B) CONTENTS.—Each report under this  
14 paragraph—

15 “(i) shall describe—

16 “(I) any action the agency—

17 “(aa) has taken or plans to  
18 take to recover improper pay-  
19 ments; and

20 “(bb) intends to take to pre-  
21 vent future improper payments;  
22 and

23 “(ii) shall not include any referrals  
24 the agency made or anticipates making to  
25 the Department of Justice, or any informa-

1           tion provided in connection with such re-  
2           ferrals.

3           “(C) PUBLIC AVAILABILITY ON CENTRAL  
4 WEBSITE.—The Office of Management and  
5 Budget shall make each report submitted under  
6 this paragraph available on a central website.

7           “(D) AVAILABILITY OF INFORMATION TO  
8 INSPECTOR GENERAL.—Subparagraph (B)(ii)  
9 shall not prohibit any referral or information  
10 being made available to an Inspector General as  
11 otherwise provided by law.

12           “(E) ASSESSMENT AND RECOMMENDA-  
13 TIONS.—The Inspector General of each agency  
14 that submits a report under this paragraph  
15 shall, for each program of the agency that is  
16 identified under paragraph (1)(A)—

17           “(i) review—

18           “(I) the assessment of the level  
19 of risk associated with the program,  
20 and the quality of the improper pay-  
21 ment estimates and methodology of  
22 the agency relating to the program;  
23 and

24           “(II) the oversight or financial  
25 controls to identify and prevent im-

1 proper payments under the program;  
2 and

3 “(ii) submit to Congress recommenda-  
4 tions, which may be included in another re-  
5 port submitted by the Inspector General to  
6 Congress, for modifying any plans of the  
7 agency relating to the program, including  
8 improvements for improper payments de-  
9 termination and estimation methodology.”;

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

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

17 (5) in subsection (g)(3) (as redesignated by  
18 paragraph (1) of this subsection), by inserting “or  
19 a Federal employee” after “non-Federal person or  
20 entity”.

21 (b) IMPROVED ESTIMATES.—

22 (1) IN GENERAL.—Not later than 180 days  
23 after the date of enactment of this Act, the Director  
24 of the Office of Management and Budget shall pro-  
25 vide guidance to agencies for improving the esti-

1       mates of improper payments under the Improper  
2       Payments Information Act of 2002 (31 U.S.C. 3321  
3       note).

4           (2) GUIDANCE.—Guidance under this sub-  
5       section shall—

6           (A) strengthen the estimation process of  
7       agencies by setting standards for agencies to  
8       follow in determining the underlying validity of  
9       sampled payments to ensure amounts being  
10      billed, paid, or obligated for payment are prop-  
11      er;

12          (B) instruct agencies to give the persons or  
13      entities performing improper payments esti-  
14      mates access to all necessary payment data, in-  
15      cluding access to relevant documentation;

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

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

24          (E) include payments to employees, includ-  
25      ing salary, locality pay, travel pay, purchase

1 card use, and other employee payments, as sub-  
2 ject to risk assessment and, where appropriate,  
3 improper payment estimation; and

4 (F) require agencies to tailor their correc-  
5 tive actions for the high-priority programs iden-  
6 tified under section 2(b)(1)(A) of the Improper  
7 Payments Information Act of 2002 (31 U.S.C.  
8 3321 note) to better reflect the unique proc-  
9 esses, procedures, and risks involved in each  
10 specific program.

11 (c) TECHNICAL AND CONFORMING AMENDMENTS.—  
12 The Improper Payments Elimination and Recovery Act of  
13 2010 (Public Law 111–204; 31 U.S.C. 3321 note.) is  
14 amended—

15 (1) in section 2(h)(1), by striking “section 2(f)”  
16 and all that follows and inserting “section 2(g) of  
17 the Improper Payments Information Act of 2002  
18 (31 U.S.C. 3321 note).”; and

19 (2) in section 3(a)—

20 (A) in paragraph (1), by striking “section  
21 2(f)” and all that follows and inserting “section  
22 2(g) of the Improper Payments Information Act  
23 of 2002 (31 U.S.C. 3321 note).”; and

24 (B) in paragraph (3)—

1 (i) by striking “section 2(b)” each  
2 place it appears and inserting “section  
3 2(c)”;

4 (ii) by striking “section 2(c)” each  
5 place it appears and inserting “section  
6 2(d)”.

7 **SEC. 4. IMPROPER PAYMENTS INFORMATION.**

8 Section 2(a)(3)(A)(ii) of the Improper Payments In-  
9 formation Act of 2002 (31 U.S.C. 3321 note) is amended  
10 by striking “with respect to fiscal years following Sep-  
11 tember 30th of a fiscal year beginning before fiscal year  
12 2013 as determined by the Office of Management and  
13 Budget” and inserting “with respect to fiscal year 2014  
14 and each fiscal year thereafter”.

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

16 (a) PREPAYMENT AND PREAWARD PROCEDURES.—

17 (1) IN GENERAL.—Each agency shall review  
18 prepayment and preaward procedures and ensure  
19 that a thorough review of available databases with  
20 relevant information on eligibility occurs to deter-  
21 mine program or award eligibility and prevent im-  
22 proper payments before the release of any Federal  
23 funds.

24 (2) DATABASES.—At a minimum and before  
25 issuing any payment and award, each agency shall

1 review as appropriate the following databases to  
2 verify eligibility of the payment and award:

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

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

7 (C) The Debt Check Database of the De-  
8 partment of the Treasury.

9 (D) The Credit Alert System or Credit  
10 Alert Interactive Voice Response System of the  
11 Department of Housing and Urban Develop-  
12 ment.

13 (E) The List of Excluded Individuals/Enti-  
14 ties of the Office of Inspector General of the  
15 Department of Health and Human Services.

16 (b) DO NOT PAY INITIATIVE.—

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

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

21 (B) use of other databases designated by  
22 the Director of the Office of Management and  
23 Budget in consultation with agencies and in ac-  
24 cordance with paragraph (2).

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

5                   (A) consider any database that substan-  
6                   tially assists in preventing improper payments;  
7                   and

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

11           (3) ACCESS AND REVIEW BY AGENCIES.—For  
12           purposes of identifying and preventing improper  
13           payments, each agency shall have access to, and use  
14           of, the Do Not Pay Initiative to verify payment or  
15           award eligibility in accordance with subsection (a)  
16           when the Director of the Office of Management and  
17           Budget determines the Do Not Pay Initiative is ap-  
18           propriately established for the agency.

19           (4) PAYMENT OTHERWISE REQUIRED.—When  
20           using the Do Not Pay Initiative, an agency shall rec-  
21           ognize that there may be circumstances under which  
22           the law requires a payment or award to be made to  
23           a recipient, regardless of whether that recipient is  
24           identified as potentially ineligible under the Do Not  
25           Pay Initiative.

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

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

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

12           (c) DATABASE INTEGRATION PLAN.—Not later than  
13           60 days after the date of enactment of this Act, the Direc-  
14           tor of the Office of Management and Budget shall provide  
15           to the Congress a plan for—

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

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

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

22           (d) INITIAL WORKING SYSTEM.—

23                   (1) ESTABLISHMENT.—Not later than 90 days  
24           after the date of enactment of this Act, the Director  
25           of the Office of Management and Budget shall es-

1        establish a working system for prepayment and  
2        preaward review that includes the Do Not Pay Ini-  
3        tiative as described under this section.

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

6            (A) may be located within an appropriate  
7        agency;

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

10          (C) shall include investigation activities for  
11        fraud and systemic improper payments detec-  
12        tion through analytic technologies and other  
13        techniques, which may include commercial data-  
14        base use or access.

15          (3) APPLICATION TO ALL AGENCIES.—Not later  
16        than June 1, 2013, each agency shall review all pay-  
17        ments and awards for all programs of that agency  
18        through the system established under this sub-  
19        section.

20          (e) FACILITATING DATA ACCESS BY FEDERAL AGEN-  
21        CIES AND OFFICES OF INSPECTORS GENERAL FOR PUR-  
22        POSES OF PROGRAM INTEGRITY.—

23            (1) DEFINITION.—In this subsection, the term  
24        “Inspector General” means any Inspector General  
25        described in subparagraph (A), (B), or (I) of section

1 11(b)(1) of the Inspector General Act of 1978 (5  
2 U.S.C. App.) and any successor Inspector General.

3 (2) COMPUTER MATCHING BY FEDERAL AGEN-  
4 CIES FOR PURPOSES OF INVESTIGATION AND PRE-  
5 VENTION OF IMPROPER PAYMENTS AND FRAUD.—

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

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

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

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

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

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

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

23 (3) GUIDANCE BY THE OFFICE OF MANAGE-  
24 MENT AND BUDGET.—Not later than 6 months after  
25 the date of enactment of this Act, and in consulta-

1           tion with the Council of the Inspectors General on  
2           Integrity and Efficiency, the Secretary of Health  
3           and Human Services, the Commissioner of Social  
4           Security, and the head of any other relevant agency,  
5           the Director of the Office of Management and Budget  
6           shall—

7                   (A) issue guidance for agencies regarding  
8                   implementing this subsection, which shall in-  
9                   clude standards for—

10                           (i) reimbursement of costs, when nec-  
11                           essary, between agencies;

12                           (ii) retention and timely destruction of  
13                           records in accordance with section  
14                           552a(o)(1)(F) of title 5, United States  
15                           Code; and

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

20                   (B) review the procedures of the Data In-  
21                   tegrity Boards established under section  
22                   552a(u) of title 5, United States Code, and de-  
23                   velop new guidance for the Data Integrity  
24                   Boards to—

1 (i) improve the effectiveness and re-  
2 sponsiveness of the Data Integrity Boards;

3 (ii) ensure privacy protections in ac-  
4 cordance with section 552a of title 5,  
5 United States Code (commonly known as  
6 the Privacy Act of 1974); and

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

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

16 (4) CORRECTIONS.—The Director of the Office  
17 of Management and Budget shall establish proce-  
18 dures providing for the correction of data in order  
19 to ensure—

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

22 (B) that corrections are made in any Do  
23 Not Pay Initiative database and in any relevant  
24 source databases designated by the Director of

1 the Office of Management and Budget under  
2 subsection (b)(1).

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

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

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

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

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

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

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

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

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

23                 (D) identify improved methods by agencies  
24                 for determining ineligible payments due to the

1 death of a recipient through proactive  
2 verification means; and

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

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

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

12 (a) DEFINITION.—In this section, the term “recovery  
13 audit” means a recovery audit described under section  
14 2(h) of the Improper Payments Elimination and Recovery  
15 Act of 2010 (31 U.S.C. 3301 note).

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

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

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

