

Legislative Bulletin.....April 28, 2010

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H.R. 3393 - Improper Payments Elimination and Recovery Act
(Murphy, D-PA)

Order of Business: The bill is scheduled to be considered on Wednesday, April 28, 2010, under a motion to suspend the rules and pass the bill.

Summary: H.R. 3393 amends the Improper Payments Reduction Act of 2002 and would require the head of each federal agency to review all programs and activities in that agency every three years and identify all programs that may be susceptible to significant improper payments.

This legislation defines “significant” improper payments as those which exceed \$10 million “and” 2.5% (1.5% before FY 2013) of program outlays or improper payments that exceed \$100 million regardless of the percentage.

H.R. 3393 sets forth risk factors likely to contribute to significant improper payments:

- “Whether the program or activity reviewed is new to the agency;
- The complexity of the program or activity reviewed;
- “The volume of payments made through the program or activity reviewed;
- “Whether payments or payment eligibility decisions are made outside of the agency, such as by a State or local government;
- “Recent major changes in program funding, authorities, practices, or procedures;
- “The level and quality of training for personnel responsible for making program eligibility determinations or certifying that payments are accurate; and
- “Significant deficiencies in the audit report of the agency or other relevant management findings that might hinder accurate payment certification.”

H.R. 3393 would require that each head of agency produce an estimate of the improper payments made and include that estimate in the annual report. The report must include

what actions the agency is taking in order to reduce improper payments, including an explanation in the causes of the improper payments, actions taken to correct the causes, and the planned or completion date of the actions to be taken.

The report must also include a statement regarding if the agency has what is necessary in terms of:

- “Internal controls;
- “Human capital; and
- “Information systems and other infrastructure.”

The report must also include steps the agency has taken to hold managers, programs, States and localities accountable through annual performance appraisal criteria for meeting the reduction targets, and establishing sufficient internal controls.

H.R. 3393 would further require the report to contain steps taken to recover improper payments including:

- “A discussion of the methods used by the agency to recover overpayments;
- “The amounts recovered, outstanding, and determined to not be collectable, including the percent such amounts represent of the total overpayments of the agency;
- “If a determination has been made that certain overpayments are not collectable, a justification of that determination;
- “An aging schedule of the amounts outstanding;
- “A summary of how recovered amounts have been disposed of;
- “A discussion of any conditions giving rise to improper payments and how those conditions are being resolved; and
- “If the agency has determined under section 2(h) of the Improper Payments Elimination and Recovery Act of 2009 (31 U.S.C. 3321 note) that performing recovery audits for any applicable program or activity is not cost effective, a justification for that determination.”

The Director of the Office of Management and Budget (OMB) will be required to submit a report to the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Oversight and Government Reform. This report must include a summary of agency reports, compliance status of agencies with this Act, government wide improper payment reduction targets and progress made on meeting these targets.

The Director of OMB will be charged with developing criteria as to when an agency should initially be required to obtain an opinion on internal control over financial reporting, and criteria for an agency that has demonstrated a stabilized, effective system of internal control over financial reporting, where the agency would qualify for a multiyear cycle for obtaining an audit opinion on internal control over financial reporting, rather than an annual cycle.

H.R. 3393 also would require the head of each federal agency to conduct recovery audits on each program that spends \$1 million annually if conducts these audits would be cost-effective. Agency heads will also be required to conduct a financial management improvement program that address problems that contribute to improper payments and seeks to reduce and errors in the agency's programs and operations.

Not more than 25% of amounts collected through recovery audits:

- “Shall be available, subject to appropriation, to the head of the agency or the State or local government administering the program or activity to carry out the financial management improvement program;
- “May be credited, if applicable, for that purpose by the head of an agency to any agency appropriations and funds that are available for obligation at the time of collection; and
- “Shall be used to supplement and not supplant any other amounts available for that purpose and shall remain available until expended.

Not more than 25% of amounts collected by an agency:

- “Shall be credited to the appropriation or fund, if any, available for obligation at the time of collection for the same general purposes as the appropriation or fund from which the overpayment was made; and
- “Shall remain available for the same period and purposes as the appropriation or fund to which credited.”

Not more than 5% of amounts collected by an agency will be available, subject to appropriation, to the Inspector General of that agency for:

- “The Inspector General to carry out this Act; or
- “Any other activities of the Inspector General relating to investigating improper payments or auditing internal controls associated with payments.”

All other amounts collected through recovery audits will be deposited in the Treasury as miscellaneous receipts.

If an agency is not in compliance of this Act for two consecutive years, and the Director of OMB determines that the agency needs additional funding to come into compliance, the head of that agency shall require additional funding to intensify compliance efforts.

If an agency is not in compliance of this Act for three consecutive years, the head of that agency shall submit reauthorization proposals, or statutory change proposals, to Congress. The Director of OMB is authorized to create a pilot program to test accountability with this Act.

Potential Conservative Concerns: Some conservatives might argue that all amounts collected through recovery audits should go towards deficit reduction. The underline bill only provides for 45% of money collected to go to the Treasury.

Additional Information: The Improper Payments Reduction Act of 2002 requires federal agencies to annually identify programs and activities that may be susceptible to “significant improper payments.” An improper payment as defined by the bill includes overpayments, underpayments, duplicate payments, payment to ineligible recipients, payments for ineligible services and payments for services not received. For each program and activity, the head of the agency must estimate the annual amount of improper payments and the amount in its annual budget and performance report under GPRA (The Government Performance and Results Act).

Committee Action: H.R. 3393 was introduced on July 29, 2009 and referred to the House Oversight and Government Reform Subcommittee on Government Management, Organization, and Procurement, which took no public action.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: A CBO score of cost to taxpayers is not available.

Does the Bill Expand the Size and Scope of the Federal Government? No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? A Committee Report citing compliance with rules regarding earmarks, limited tax benefits, or limited tariff benefits is not available. Such a report is technically not required because the bill is being considered under a suspension of the rules.

Constitutional Authority: A Committee Report citing constitutional authority is not available.

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H.R. 5148 - To clarify the instances in which the term “census” may appear on mailable matter (Issa, R-CA)

Order of Business: The bill is scheduled to be considered on Wednesday, April 28, 2010 under a motion to suspend the rules and pass the bill.

Summary: This legislation amends H.R. 4621 to require that mail with the term “census” clearly identify the sender and the return address. It would also require that the

mailing include a disclaimer stating it is not from, or associated with, the federal government.

Additional Information: The RNC recently [came under criticism](#) for a fundraising practice that looks like official U.S. Census mail. This happened after a law was passed ([H.R. 4621](#)) that was aimed at ending the practice of allowing fundraising letters to look like official Census documents.

Committee Action: H.R. 5148 was introduced on April 27, 2010 and referred to the House Oversight and Government Reform Committee, which took no public action.

Cost to Taxpayers: No CBO score is available.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No CBO score citing any potential such mandates is available.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No committee report citing any potential earmarks is available.

Constitutional Authority: No committee report citing constitutional authority is available.

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H.Con.Res. 264 - Authorizing the use of the Capitol Grounds for the National Peace Officers' Memorial Service (*Del. Norton, D-DC*)

Order of Business: The resolution is scheduled to be considered on Wednesday, April 28, 2010, under a motion to suspend the rules and pass the resolution.

Summary: H.Con.Res. 264 would allow the Fraternal Order of Police and its auxiliary to be permitted to sponsor a public event, the 29th Annual National Peace Officers' Memorial Service, on the Capitol Grounds, in order to honor the law enforcement officers who died in the line of duty during 2009.

The event shall be held on May 15, 2010, or on such other date as the Speaker of the House of Representatives and the Committee on Rules and Administration of the Senate jointly designate.

The event will be free of admission charge and open to the public. The Fraternal Order of Police shall assume full responsibility for all expenses and liabilities incident to all activities associated with the event.

Committee Action: H.Con.Res. 264 was introduced on April 21, 2010, and referred to the House Committee on Transportation and Infrastructure which took no public action.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: A CBO report is unavailable.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Though the bill contains no earmarks, and there's no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

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H.R. 5147 - Airport and Airway Extension Act of 2010 *(Oberstar, D-MN)*

Order of Business: The bill is scheduled to be considered on Wednesday, April 28, 2010, under a motion to suspend the rules and pass the bill.

Summary: The legislation would extend the Federal Aviation Administration's (FAA) authority to collect taxes and administer FAA programs through July 3, 2010 (under current law this authority lapses on April 30, 2010). Specifically, the legislation would:

- Extend Funding for the Airport and Airway Trust Fund through July 3, 2010;
- Extend the Airport and Airway Trust Fund Expenditure Authority through July 4, 2010; and
- Extend the Airport Improvement Program through July 3, 2010.
 - Authorize appropriations of \$3,024,657,534 between October 1, 2009 and July 3, 2010.

Sets Authorized Spending Levels: This legislation authorizes the following FAA programs, and sets authorized funding levels (subject to appropriation) as follows:

FAA Operations, \$7.070 billion

Air Navigation Facilities and Equipment, \$2.220 billion

Research, Engineering, and Development, \$144 million

Additional Background: The previous extension (H.R. 4957) passed the House on March 25, 2010 by voice vote.

Committee Action: H.R. 5147 was introduced on April 27, 2010 and referred to the House Transportation and Infrastructure Committee and the House Ways and Means Committee, which took no public action.

Cost to Taxpayers: No CBO score is available.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Though the bill contains no earmarks, and there's no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

Constitutional Authority: A committee report citing constitutional authority is not available.

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