



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

April 20, 2012

### **S. 1409** **Improper Payments Elimination and Recovery Improvement Act of 2011**

*As ordered reported by the Senate Committee on Homeland Security  
and Governmental Affairs on October 19, 2011*

#### **SUMMARY**

S. 1409 would amend federal law to require federal agencies to expand their efforts to identify, recover, and prevent improper payments (including overpayments, underpayments, payments that were not adequately documented, and fraudulent payments). The legislation would require the Office of Management and Budget (OMB) to provide guidance, oversight, and review of agencies' efforts to manage improper payments. S. 1409 also would establish additional responsibilities for agencies and require them to operate Recovery Audit Contracting (RAC) programs.

Based on information from federal agencies, CBO estimates that implementing S. 1409's new requirements to identify, recover, and prevent improper payments would cost \$735 million over the 2013-2017 period, subject to appropriation of the necessary funds. CBO expects that conducting RAC programs would lead to net recoveries that would exceed the costs of operating the programs, with net savings for the federal government that would probably be several million dollars. However, the savings cannot be attributed to S. 1409 because of long-standing rules established by the Congress for estimating the effects of proposed legislation that could generate programmatic savings stemming from new authority for administrative activity. Enacting S. 1409 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 1409 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

#### **ESTIMATED COST TO THE FEDERAL GOVERNMENT**

The estimated budgetary impact of S. 1409 is shown in the following table. The costs of this legislation fall within most budget functions.

	By Fiscal Year, in Millions of Dollars					2013- 2017
	2013	2014	2015	2016	2017	
<b>CHANGES IN SPENDING SUBJECT TO APPROPRIATION</b>						
Estimated Authorization Level	50	245	245	195	0	735
Estimated Outlays	45	225	245	200	20	735

## **BASIS OF ESTIMATE**

For this estimate, CBO assumes that S. 1409 will be enacted in fiscal year 2012, that the necessary funds will be provided for each year, and that spending will follow historical patterns for similar programs.

S. 1409 would expand upon current law, Executive Order 13520, and two Presidential memoranda to require federal agencies to expand their efforts to identify, recover, and prevent improper payments. The legislation would require that 10 RAC pilot programs be initiated for three years. (Recovery auditing is a process of using contractors to review payment transactions and supporting data to identify and recover overpayments and respond to underpayments.) In addition, the legislation would require additional reporting by agencies and an expansion of the federal government’s “Do Not Pay List” (a database to prevent the government from paying benefits, contracts, grants, and loans to ineligible people or organizations).

Improper payments include payments of an incorrect amount (both overpayments and underpayments), to the wrong recipient, made without proper documentation, or for unauthorized or inappropriate purposes. Not all improper payments involve fraud or result in a loss to the federal government. The Government Accountability Office has reported that federal agencies estimate they made \$115.3 billion in improper payments during fiscal year 2011. Just 10 federal programs accounted for 93 percent of those improper payments.<sup>1</sup>

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1. Those programs were: Medicare fee-for-service, Medicaid, Earned Income Tax Credit, Unemployment Insurance, Medicare Advantage, Supplemental Security Income, Old Age Survivors and Disability Insurance, Supplemental Nutrition Assistance, National School Lunch, and Medicare Prescription Drug Benefit.

In 2005, the Centers for Medicare and Medicaid Services (CMS) started a RAC demonstration program. As part of the demonstration, CMS made available to recovery audit contractors claims from 2001 through 2007, and the contractors identified and corrected errors in about 0.3 percent of those claims. The demonstration program cost about \$200 million to operate and returned about \$695 million to the Medicare trust funds. A RAC program was subsequently implemented nationwide for fee-for-service claims: over the 2008-2011 period, CMS spent about \$570 million to develop the Recovery Audit Contractor Data Warehouse, to improve data collection and analysis, and to pay for recurring costs of the contract. As a result, it recovered overpayments of \$873 million and corrected underpayments of almost \$160 million, for a net savings of about \$140 million. In 2012 and subsequent years, net recoveries should exceed the recurring costs of the program by a larger margin as the nonrecurring expenditures to establish the program continue to produce savings.

Assuming other agencies would have similar costs for establishing RAC programs, CBO expects that implementing 10 RAC programs would cost \$735 million over the 2013-2017 period. This would include about \$1 million annually to implement each of several smaller RACs and about \$50 million annually per RAC for larger programs with improper payments, including health care, taxes, Social Security, unemployment, and nutrition.

CBO also expects that, over time, net recoveries from RACs would exceed payments to contractors for program management costs. That is, net recoveries would probably exceed \$735 million. Based on the current program operated by CMS, CBO expects that the new RACs would incur net costs over the first few years for development, implementation, and administration, but would have net gains in later years. Net savings over time would depend upon the programs reviewed. CBO expects that such savings would likely total several million dollars over the 2013-2017 period, but would likely be significantly less than the RAC program run by CMS. The current program recoups payments from institutions such as hospitals, skilled nursing facilities, and other providers, including physicians and suppliers of durable medical equipment. Amounts can be recovered by reducing future program payments to those institutions or by seeking reimbursement from their assets. In contrast, many of the new RACs would seek to recover overpayments to many individual beneficiaries of income support programs such as Disability Insurance and Supplemental Nutritional Assistance. Agencies may face limits on the amount that they can garnish from subsequent payments to such individuals, who are also less likely to have savings or other income with which to repay the federal government.

For this cost estimate, however, CBO cannot attribute savings to S. 1409's RAC provisions because any such savings would either be contingent on future legislation or would be subject to Scorekeeping Guideline 14 (as established by the Congress and explained below). While S. 1409 would authorize and direct agencies to operate RAC

programs, this bill would not provide any funds to operate those new programs. In some cases, the amounts necessary to operate such programs would stem from subsequent appropriation acts; thus, S. 1409 cannot be credited for achieving those savings itself. In other cases, a mandatory spending program might directly fund the administrative costs of a RAC program, but Scorekeeping Guideline 14 states that: *“No increase in receipts or decrease in direct spending will be scored as a result of provisions of a law that provides direct spending for administration or program management activities.”* Therefore, any savings that may result from additional spending on administrative activities aimed at achieving operational efficiencies cannot be counted (for Congressional scorekeeping purposes) as a direct result of the legislation providing such a funding source. If enacted, any expected savings attributable to the creation of new RAC programs would ultimately be included in baseline budget projections, and any savings achieved would be reflected in the budget data.

**PAY-AS-YOU-GO CONSIDERATIONS:** None.

#### **INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT**

S. 1409 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no significant costs on state, local, or tribal governments.

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