CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

December 21, 2018

S. 2948
Payment Integrity Information Act of 2018

As reported by the Senate Committee on Homeland Security and Governmental Affairs on December 19, 2018

SUMMARY

S. 2948 would direct federal agencies to undertake numerous activities designed to reduce improper payments. Enacting S. 2948 could affect direct spending and revenues; therefore, pay-as-you-go procedures apply. However, CBO cannot estimate the magnitude of those effects. S. 2948 also could affect spending subject to appropriation, but CBO cannot determine the potential change in discretionary spending.

Although CBO cannot determine the effects of S. 2948, the bill probably would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 2948 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

BACKGROUND AND CURRENT LAW

Within government programs, an improper payment is generally defined as "any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. In addition, improper payments include payments with insufficient documentation to determine if the payment was proper."[1]

Over the past two decades, numerous laws have been enacted to curtail improper payments, including the Improper Payments Information Act of 2002, the Improper Payments Elimination and Recovery Act of 2010, the Improper Payments Elimination and Recovery Improvement Act of 2012, and the Fraud Reduction and Data Analytics Act of 2015. Improper payments can include fraud as well as payments that arise from

1. Sec. 2(f)(2) of the Improper Payments Elimination and Recovery Act of 2010, Public Law 111-204.

paperwork or human errors, such as accidental transposition of numbers in a form, or from design elements that make program susceptible to improper payments.[2]

Although improper payments can be difficult to measure, according to guidance from the Office of Management and Budget (OMB), federal agencies must estimate their magnitude for many programs.[3] In addition, the Government Accountability Office (GAO), maintains a list of programs at high risk for improper payments.[4]

BASIS OF ESTIMATE

Among other activities, S. 2948 would require federal agencies to identify and report annually on programs that are susceptible to improper payments. Agencies also would need to estimate the magnitude of improper payments and report to their inspectors general and the OMB Director on progress toward reducing improper payments in programs within their agency.

S. 2948 also would require agencies to implement recovery audits for any program or activity that spends more than $1 million annually if it would be cost-effective to do so. Under recovery audits, third-party contractors identify overpayments and underpayments in federal programs. Such auditors may be paid from contingency fees—for example, receiving a percentage of identified improper payments—or compensated using a set fee.

For example, the Centers for Medicare & Medicaid Services (CMS) currently conducts recovery audits for Medicare's fee-for-service program. Contractors are paid on a contingency basis, generally between 9 percent and 12 percent of the improper payments they identify. Over fiscal years 2013 through 2016, the current Medicare recovery audit contractor (RAC) program returned approximately $5 billion to the Medicare Trust Funds.[5] This represents about 0.2 percent of Medicare spending over that same period.

Although recovery audits could be used effectively to identify underpayments and recover overpayments, CBO cannot estimate the budgetary effects of this provision, for several reasons:

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2. Common reasons for improper payments are described at Performance.gov, "Payment Accuracy: Frequently Asked Questions" (accessed December 19, 2018), https://paymentaccuracy.gov/faq.

3. Acceptable statistical sampling methods are described in Office of Management and Budget, *Requirements for Payment Integrity Improvement*, Circular A-123, Appendix C (June 2018), https://go.usa.gov/xExQG (PDF, 2.3 MB).

4. Government Accountability Office, "High Risk List" (accessed December 19, 2018) www.gao.gov/highrisk/overview.

5. For more information on the CMS RAC program, see Centers for Medicare & Medicaid Services, "Medicare Fee for Service Recovery Audit Program: "Resources" (September 18, 2018) https://go.usa.gov/xExQ6.

- It is not clear how many agencies might use recovery audits under S. 2948 or how much federal spending might be affected. Agencies can use such audits under current law; if they do not, it might indicate that they do not judge the engagement of contract auditors to be useful or cost-effective.

- The bill's standard for cost-effectiveness for recovery audits would depend, in part, on how agencies structured payments to contractors. As a result, it is difficult to estimate the probable scope of recovery audits or their budgetary effects.

- With respect to spending for programs subject to appropriation, recovered overpayments might not result in net savings, especially if agencies could spend the recovered funds without subsequent appropriation action. Future appropriations would need to be reduced to result in overall federal savings.

In addition, it is unclear whether CMS would be able to continue to operate its current RAC program, which differs from the one envisioned in the legislation in several aspects. If the program changed to meet the requirements of S. 2948, Medicare recoveries of improper payments could be larger or smaller, which also would affect direct spending. CBO cannot estimate the direction or magnitude of those effects.

The legislation also would require federal agencies to undertake several new or modified activities that CBO expects could require new administrative resources. Because such spending is generally subject to appropriation, S. 2948 would increase the amount of discretionary funding that agencies require. However, CBO cannot determine how the bill might affect such spending. Agencies could redirect current spending on activities designed to reduce improper payments to fulfill the requirements of S. 2948 but those resources could be insufficient to meet the legislation's requirements.

CBO also cannot determine whether the activities mandated by section (a), Identification of Susceptible Programs and Activities, or section (b), Improving the Determination of Improper Payments, would materially affect the ability of federal agencies to identify, prevent, and recover improper payments. For example, as noted above, GAO already identifies high-risk programs; it is not immediately evident how the identification mandated by S. 2948 would build on or interact with that process. Similarly, agencies are now required to identify improper payments within the programs they administer and it is not clear that the changes mandated by S. 2948 would improve on current processes. Therefore, CBO cannot determine that federal spending would change if the activities required under S. 2948 were implemented.

One mechanism to reduce improper payments under S. 2948 would be to increase staffing of federal agencies, with additional personnel focused on preventing and recovering such payments. Using information from the Office of Personnel Management, CBO estimates that approximately 81,500 current federal workers engage in activities related to obligating, apportioning, or otherwise managing federal funds. On the basis of average salary and benefit information, CBO estimates that compensation for those workers totals more than $8 billion annually. Based on that information, a 1 percent increase in staff (approximately 30 employees at each major agency) devoted to preventing improper payments thus would cost more than $80 million annually, and about $400 million over a five-year period, assuming appropriation of the estimated amount. A 5 percent increase in staffing would cost more than $415 million annually and add more than 4,000 new employees throughout the government. S. 2948 neither authorizes nor appropriates funding for agencies to hire additional personnel. Moreover, CBO has not estimated the reduction in improper payments that might occur if federal agencies hired additional employees to focus on improper payments.

INCREASE IN LONG-TERM DIRECT SPENDING AND DEFICITS

Although CBO cannot determine the budgetary effects of S. 2948, it probably would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

MANDATES

S. 2948 contains no intergovernmental or private-sector mandates as defined in UMRA.

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