

# IMPROPER PAYMENTS IN FEDERAL PROGRAMS

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HEARING  
BEFORE THE  
COMMITTEE ON FINANCE  
UNITED STATES SENATE  
ONE HUNDRED FOURTEENTH CONGRESS  
FIRST SESSION

OCTOBER 1, 2015



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## **IMPROPER PAYMENTS IN FEDERAL PROGRAMS**

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**THURSDAY, OCTOBER 1, 2015**

U.S. SENATE,  
COMMITTEE ON FINANCE,  
*Washington, DC.*

The hearing was convened, pursuant to notice, at 10:05 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Present: Senators Grassley, Crapo, Roberts, Thune, Isakson, Portman, Coats, Scott, Wyden, Stabenow, Menendez, Carper, Cardin, Brown, Bennet, and Casey.

Also present: Republican Staff: Chris Campbell, Staff Director; Chris Armstrong, Deputy Chief Oversight Counsel; and Kimberly Brandt, Chief Healthcare Investigative Counsel. Democratic Staff: Joshua Sheinkman, Staff Director; David Berick, Chief Investigator; Adam Carasso, Senior Tax and Economic Advisor; Elizabeth Jurinka, Chief Health Policy Advisor; and Tom Klouda, Senior Domestic Policy Advisor.

### **OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM UTAH, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. The committee will come to order. I want to welcome everyone to today's hearing on improper payments in Federal programs.

The Federal Government spends roughly \$3.5 trillion every year. I am going to repeat that number: \$3.5 trillion a year.

I think most reasonable people would agree that not all of that money is well spent. There is, of course, plenty of questionable spending that the government does on purpose on a more or less daily basis. But that is a whole other hearing. Today's hearing is about the spending the Federal Government does by accident.

All told, according to the Government Accountability Office, there was about \$125 billion of this kind of accidental—or improper—spending in the last fiscal year alone.

We talk about so much money here in Congress—millions, billions, and even trillions of dollars. We casually cite dollar figures that are incomprehensible to most people. And too often, politicians and policymakers talk about these dollars as if they were Washington's, as if the funds just materialized out of thin air for the sole purpose of being spent by our wonderful government.

But let us be clear about one thing: these funds—these millions, billions, and trillions of dollars that we talk about and sometimes spend rather haphazardly—belong to the taxpayers. These are dol-

lars the Federal Government has either taken out of paychecks or borrowed from future taxpayers.

So when we talk about losing billions of dollars, it is not Washington's dollars that have been lost. Instead, it is money that we have taken away from hardworking people and then squandered through improper oversight or plain old irresponsibility. I hope we keep that in mind as we talk more about millions and billions here today.

Just think about what could be purchased with \$125 billion. That amount would buy an iPad for every single American. It would buy every person in the country a year's worth of meals at Chipotle. Or to put it another way, \$125 billion would be enough to pay for health insurance for every living person in Florida, our third most populous State.

According to the Congressional Budget Office, total tax revenues average out to about \$17,000 per American household. By that estimate, for over 7 million American families, who work hard to stay on budget, pay their bills on time—and, yes, pay their taxes—every single dollar they sent to Washington in the last fiscal year was wasted on improper payments.

Earlier this year, GAO issued a report entitled “Opportunities to Reduce Fragmentation, Overlap, Duplication, and Improper Payments and Achieve Other Financial Benefits.” That is quite a title. This report provided updates on the government's progress—or lack thereof—in addressing more than 440 actions previously recommended by GAO that were designed to cut waste in government spending programs and implement efficiencies in government services across 180 areas of concern identified in past annual reports.

While the GAO estimated that executive branch and congressional actions to reduce waste and abuse resulted in roughly \$20 billion in “financial benefits” between fiscal years 2011 and 2014, only 29 percent of GAO's recommendations were classified as “fully addressed” as of November of last year. In other words, while some progress has been made to address these concerns, any successes we have seen have been overshadowed by a persistently growing mountain of waste, fraud, abuse, and mismanagement.

The problem is actually much worse than you might think. According to GAO, in fiscal year 2014, the estimated amount of government-wide improper payments increased by nearly 20 percent—that is \$19 billion—over the previous year, the largest increase we have seen in recent years. So basically, this 1-year increase in improper payments essentially wiped out the \$20 billion in financial benefits accrued over a 4-year period from implemented recommendations.

While the payment errors were spread among 22 Federal agencies, last year's increase was primarily due to estimates for Medicare, Medicaid, and the Earned Income Tax Credit, which account for over 76 percent of all improper government payments. Since all three of these programs fall under our committee's jurisdiction, I want to take a moment to examine them individually.

The Medicare program, which provides essential health coverage to elderly and disabled beneficiaries, paid out nearly \$60 billion in improper payments in fiscal year 2014. That is nearly half of all

the improper payments across the entire government and roughly 10 percent of all paid Medicare benefits.

That is right. About 1 out of every 10 dollars paid out of Medicare was paid in error. That is unacceptable.

Last year, Medicaid, our primary health safety net for poor and vulnerable Americans, paid out approximately \$17.5 billion in improper payments. Now, that is Medicaid. Just to put that in context, the government paid more in improper Medicaid payments last year than it spends in a year for the entire Temporary Assistance for Needy Families, or TANF, program, our country's main cash welfare program for the poor.

And as you all know, the Earned Income Tax Credit, or EITC, provides a refundable tax credit to working taxpayers that can be as much as \$5,500 for an income-eligible family with two children. In fiscal year 2014, the government paid out nearly \$18 billion in improper payments under the EITC. That is more than 27 percent—more than 1 out of every 4 dollars—of what we spent on the entire program.

Of course, we have all known about the high rates of improper payments in all of these programs for years now. And while these numbers, by their sheer size, are staggering, none of them should be surprising. This is a problem that has been many years in the making. And if you ask me, the time for addressing it is long past due.

I think we are going to have an interesting and informative conversation about these issues today. I want to thank the Comptroller General for being here today and for his agency's hard work in uncovering and addressing these issues. This committee greatly values GAO's insights, and I look forward to hearing more about their recommendations today.

[The prepared statement of Chairman Hatch appears in the appendix.]

The CHAIRMAN. With that, I will turn to Senator Wyden for his opening remarks.

**OPENING STATEMENT OF HON. RON WYDEN,  
A U.S. SENATOR FROM OREGON**

Senator WYDEN. Thank you very much, Mr. Chairman.

I think, right at the outset, it is important to try to define the topic at hand. And in my view, there are two issues, which are related but distinct.

The first is improper payments, which are payments that are too big, too small, or documented in the wrong way. In most cases, it comes down to accounting errors or taxpayers getting tripped up by byzantine, overly complicated tax rules.

The second issue is out-and-out fraud, which is a criminal act that results in illegal payments.

Let me begin by saying that nobody on this side of the aisle is ever going to back down from the challenge of fixing improper payments and fighting fraud. That is because every single taxpayer dollar that is lost to mistakes, no matter the cause, is a dollar that just is not available to help hard-hit seniors cover medical costs, put a student through college, or rebuild America's aging infrastructure. The Congress has to do everything it possibly can to

eliminate both fraud and improper payments. I do think it is important to note that by conflating the two, conflating improper payments and fraud, you run the risk of not getting the job done when it comes to either.

When it comes to cutting down on improper payments, there is bipartisan action that can be taken. And we know that because, in this very committee, the Finance Committee passed bipartisan legislation in June—the AFIRM Act—that can help Medicare cut down improper payments by shoring up the system of audits and appeals. The crushing backlog of appeals is a major source of frustration to both America's older people and providers, and the audit system in place needs very significant improvements from what we have today. Our bipartisan legislation is going to help make sure that the right payments are going out, and it will keep paperwork and bureaucratic red tape from coming between doctors and their patients.

Now, when it comes to combating actual fraud, the Government Accountability Office and the National Taxpayer Advocate have said that one of the best ways to go after these tax fraudsters is by protecting American taxpayers from predatory and incompetent paid return preparers. When you look at the facts, setting standards for tax return preparers ought to be a no-brainer. At the Federal level, however, there are no standards whatsoever protecting taxpayers from incompetence and dishonesty among paid return preparers. Only four States have their own standards.

As a result, across the country, incompetent preparers make mistakes that cause financial nightmares for so many families, particularly those of limited means. Or worse, unethical, fraudulent tax return preparers pose as trustworthy businesspeople and steal money from those who are actually struggling to get by.

Now, my home State is one of four that has managed to get this issue right and protects innocent Americans from these tax ripoff artists. Now, it is not just me saying there ought to be nationwide protections against fraudulent tax preparers. It is the Government Accountability Office and the Taxpayer Advocate, which are trusted and nonpartisan voices on these issues. Colleagues, we use these nonpartisan leaders on scores of issues, and Chairman Hatch and I have a proposal ready to go that would combat fraud in a number of ways, including by regulating paid tax return preparers. And it is my hope that the committee is going to move this soon.

Finally, as the Government Accountability Office points out in its testimony, setting standards for paid tax preparers has multiple benefits. Not only will it crack down on fraud, it is going to help cut down on improper Earned Income Tax Credit payments. That is because nearly half of the tax returns done by paid preparers improperly claim the Earned Income Tax Credit.

I will just wrap up by stating that you really cannot get a full picture of how to protect taxpayer dollars without looking at several other issues. The first is the annual tax gap of \$385 billion, three times the total amount of improper payments government-wide. And second, though it is not the exclusive province of this committee, the Pentagon should not get a free pass when it comes to improper payments just because some members of Congress find



it easier to focus on health care and tax programs. Those issues ought to be a part of the debate as well.

So today we look at the challenge of improper payments as an opportunity to make our tax system and spending programs work better. And we look at it as an opportunity to crack down on and aggressively move against tax fraud. The Government Accountability Office made a number of recommendations on how to make that happen. We are very pleased to have Mr. Dodaro's testimony and appreciate his professionalism and look forward to his comments.

The CHAIRMAN. Thank you, Senator.

[The prepared statement of Senator Wyden appears in the appendix.]

The CHAIRMAN. Let me take a few minutes to introduce our notable witness, Mr. Gene L. Dodaro. Mr. Dodaro was confirmed as the eighth Comptroller General of the United States and head of the U.S. Government Accountability Office in December 2010, and he previously acted in that role starting in March 2008.

Including these 7 years of dedicated service, Mr. Dodaro served the country for more than 40 years at the GAO. He served most recently as Chief Operating Officer, but has also headed GAO's Accounting and Information Management Division, where he conducted the first-ever audit of the comprehensive financial statements covering all Federal departments and agencies.

Mr. Dodaro has also worked closely with Congress and several administrations on major management reform initiatives, including the 1994 Government Management Reform Act, the revised 1995 Paperwork Reduction Act, and the Clinger-Cohen Act of 1996. He received a bachelor's degree in accounting from Lycoming College in Pennsylvania and is a fellow of the National Academy of Public Administration and a member of the Association of Government Accountants.

Mr. Dodaro has also been recognized for his service, with awards such as the National Public Service Award from the American Society for Public Administration, the Roger W. Jones Award from American University, and the Braden Award from the Department of Accountancy at Case Western Reserve University.

Mr. Dodaro, we would like to thank you not only for testifying here today, but for your dedication to improving this country. You are living proof of what bipartisan efforts can achieve if we just work together. So please feel free to proceed with your opening statement, and then I know we will have some questions for you.

**STATEMENT OF HON. GENE L. DODARO, COMPTROLLER GENERAL OF THE UNITED STATES, GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, DC**

Mr. DODARO. Thank you very much, Mr. Chairman, Ranking Member Wyden, and members of the committee. I am very pleased to be here today to have this opportunity to talk about improper payments and the tax gap. Both of these areas involve huge amounts of money. I believe there is considerable opportunity to improve the Federal Government's fiscal position while not having any detrimental effect on the important programs that serve our citizens across the country.

First, on improper payments, as we show in Figure 1 in my written testimony, since the Congress has required by law Federal agencies to report estimates of improper payments, starting in 2003, the cumulative total of improper payments estimated has risen close to \$1 trillion over this period of time. The latest estimate, as pointed out in your opening statement, Mr. Chairman, was \$124.7 billion in fiscal year 2014, up \$19 billion from the prior year. So it is very important to get a perspective on the cumulative number as well as the annual numbers that have been pointed out.

Figure 2, as has been mentioned, shows that about 75 percent of the improper payment estimates for 2014 involved Medicare, the blue part on the chart, which is about 48 percent. Medicaid is 14 percent, and another 14 percent is for the Earned Income Tax Credit. So these programs are important to focus on, as you mentioned in your opening statements.

But I also want to emphasize the point that this is a government-wide issue. The estimate here for 2014 involves 124 programs at 22 different agencies across the Federal Government. So it is not confined to these programs. For example, Appendix II shows that there are ten programs that have improper payment rates over 10 percent. The law sets a bar. If you are over 10 percent, you are not in compliance with the law. And so this problem needs to be addressed on multiple levels.

Now, we have made many recommendations in this area. The Congress has passed laws in 2002, 2010, and 2012 to address this issue. Senator Carper has been very involved in helping shape this legislation. The administration is focused on it, and the agencies are focused on it. But much more needs to be done.

First, there are several programs, including TANF, where estimates are not being made at all. So this picture is not the complete picture of the full extent of potential improper payments across the Federal Government, as large as these numbers are.

Secondly, there are a number of areas where better estimates are required. The Department of Defense is one of those areas where we think there needs to be better estimates. We also think that there needs to be a better effort to focus on root causes of the problems. The documentation issue is a symptom. It is not necessarily the root cause of the problem.

And lastly, we think there is room for the Congress to enact additional legislation in this area, particularly to require improper payment estimates for TANF and also provide GAO clear access to the National Directory of New Hires database, which would allow us to provide a lot more analysis that would help particularly for those programs that require income eligibility.

Now, let me quickly turn to the tax gap. The latest estimate of the tax gap by the IRS is \$450 billion, a gross estimate based on their examination of 2006 data. They expect to collect some amount of money, so the net tax gap is \$385 billion. It does not take long for that to accumulate to trillions over a period of time. The tax gap largely results from underreporting, as Figure 3 shows: 84 percent of the tax gap is attributable to people not reporting or underreporting their income. Underpayments, where they are acknowledging the tax debt and not paying, is another 10 percent, and the non-filers are 6 percent. The biggest area is in the individual in-

come tax, and over half of that is business income tax for sole proprietors, partnerships, and S corporations as well.

Figure 4 shows that there is a direct correlation between the tax gap and third-party reporting. Where you have third-party reporting to individuals and the Government, you have very small amounts in the tax gap. For example, on wages and salaries, for those people who have the deductions taken out of their wages and salaries, and salaries that employers report to employees and the IRS, it is only 1 percent of the total amount of improper payments. And it goes up the scale to where you have business income reporting and other areas where there is no third-party reporting or very limited information. Over half of these types of income are misreported.

We made many recommendations to the IRS to increase the use of third-party information, to better target their efforts. They have a strategy for providing online services to people to help those who want to voluntarily comply better and understand their responsibilities. And we also have made suggestions to the Congress to regulate paid tax preparers and to accelerate W-2 reporting so the IRS has information earlier in the process.

I am very pleased to see this committee considering legislation to regulate tax preparers and accelerate W-2 reporting. I think it is a very good move, and I support it. And I would be happy to answer questions about that and any other area, Mr. Chairman.

Thank you very much again for the opportunity to be here today. [The prepared statement of Mr. Dodaro appears in the appendix.]

The CHAIRMAN. Well, thank you, Mr. Dodaro. We appreciate the work that you are doing, and this is pretty astounding, I think, to most Americans, how really widespread this is and how expensive it is to all the taxpayers in America.

For years, GAO has consistently identified the Earned Income Tax Credit as having the highest rate of improper payments across all Federal programs. Last year, the improper payment rate went up even more. The EITC improper payments last year totaled nearly \$18 billion, which is more than a quarter of all Earned Income Tax Credits that the Federal Government paid.

I understand that you have made some recommendations to Congress to improve the program, which the committee is considering, but through the years, you have also made a number of recommendations for the IRS to improve its administration of the program as well.

With a 27-percent error rate, which is about twice as high as any other government program, the Earned Income Tax Credit appears to be about the most poorly administered Federal program. Would you agree with me on that?

Mr. DODARO. The Earned Income Tax Credit provides important assistance, but it is one of the most difficult, complex programs to administer. So I think the Congress can help in this area. The IRS can do more as well, as you point out. We are currently looking at the program again, and we hope to come up with some additional recommendations. But I believe legislative changes are needed to help address this high error rate.

The CHAIRMAN. And you will be happy to recommend those legislative changes to us?

Mr. DODARO. Yes, I will.

The CHAIRMAN. What is it about the Earned Income Tax Credit that makes it so difficult to administer? And let me ask you another question too, at the same time. How has the IRS responded to GAO's recommendations over the past several years?

Mr. DODARO. The difficulty stems from a couple of factors.

Number one, the eligibility for this tax credit gets determined by the taxpayers themselves or by their tax preparers. It is unlike other programs where people submit an application and their eligibility is determined by the government or a third party on the government's behalf: State and local governments, for example. In this case, they are making the determination. And it has a lot of complexity concerning, particularly, child care arrangements and having qualified children.

The second problem is that the IRS has limited ability to verify the income levels for people or their filing status. A fundamental problem is that the IRS does not receive the W-2 information until April. That is after a lot of people have filed their returns and the IRS has provided refunds to them based on their information. This is a problem not only for the Earned Income Tax Credit but for identity theft as well, because the crooks file early, and the IRS does not have any ability to be able to easily verify the income through independent sources.

Now, IRS has implemented our recommendations over the years. As I mentioned, we are working on identifying other recommendations for the IRS. But the legislative changes that we are recommending are to regulate paid tax preparers and accelerate the availability of W-2 information earlier in the process and also increase the requirements for electronic filing.

The CHAIRMAN. Well, the committee is considering legislation that would, among other things, regulate tax preparers, largely because of the high rates of improper payments in the EITC space for tax returns prepared by unregulated preparers.

Now, in your opinion, should we provide IRS with additional authority to regulate paid tax preparers? And if not, why not?

Mr. DODARO. I definitely think you should pass legislation to require IRS to regulate paid tax preparers. Millions of people in the United States rely on paid tax preparers and over half of the people who file their returns. In studies that we have done, we found that paid tax preparers have made a considerable number of errors. For example, we randomly selected 19 paid tax preparers a few years ago, went in and found that only two of the 19 gave us the right information to be filed with the IRS, and seven of those cases gave such inaccurate information that they would have put the paid tax preparer and the individual citizen at risk of serious penalties and fines associated with this. We analyzed the IRS data and determined that 60 percent of the returns filed by paid tax preparers had errors. So we think this is an important area.

As Senator Wyden mentioned, we studied this situation in Oregon, and we did an analysis, and we found that in Oregon's situation, a paid tax preparer was much more likely, 72 percent more likely, to file the correct tax return than tax preparers throughout the rest of the country.

So we think there is ample evidence to support this, and it is particularly important since I know the Congress is focused on the amount of resources of the IRS. They need to leverage paid tax preparers. You know, they already regulate some paid tax preparers, but they do not regulate most of them. The majority of tax preparers are not regulated.

So I would very much encourage the Congress to give them this authority, and they need to implement it effectively and with due process.

The CHAIRMAN. Well, thank you. My time is up.  
Senator Wyden?

Senator WYDEN. Thank you, and thank you, Mr. Dodaro, particularly for your points with respect to how regulation of tax preparers allows us to up the ante against fraud with the Earned Income Tax Credit. That is why I cited it in my opening statement. I largely cited it in my opening statement because of the good work that you all did back in 2014. You drilled deep into the roots of why there are so many of these improper payments, and, based on your analysis and our discussions with your folks, it kept coming back again and again and again to fraud by these tax preparers. So we are very hopeful that we will be able to move our legislation soon, and I appreciate your good work on that.

I want to ask you a question with respect to the tax gap, because, as you correctly stated, what we are talking about here is essentially \$450 billion. This is the gross amount of taxes owed but not paid annually.

As I look at the tax structure in America, what happens is, if you are a working family, for example, in Indiana—Senator Coats is here. He and I have worked together on bipartisan tax reform for some years. If you are a working family in Indiana or in Oregon, you have your taxes taken directly out of your paycheck. You know; you can see it on your pay stub.

If you are making your money mostly with respect to investments, then you have people preparing various kinds of documents. You can use all these breaks and exemptions and credits. And what Senator Coats and I have sought to do all these years, much along the lines of what President Reagan and Democrats did in the 1980s, is to try to clean out a lot of that junk—clean out a lot of that junk in order to hold the rates down and still have a graduated rate structure.

But it seems to me, in addition to that, what you are saying is, we need to beef up tax enforcement, and particularly, given your testimony, we need to beef it up so that it targets those kinds of instances where you do not have the money directly taken out of a paycheck, to reduce the prospects of fraud.

I am looking at page 43 of your testimony where you talk about the implications of reduced enforcement at the IRS, and I think it would be very helpful if you could talk about what reduced enforcement of America's tax laws really means for this big job of closing the tax gap. And the reason I bring it up, particularly with my friend and colleague Senator Coats and I here, is that we believe simplifying the code, as the two of us have sought to do, is certainly a step in the right direction. I also feel that your recommendation there at page 43, with respect to tax enforcement, is

important, and I wonder if you could go into that as part of this agenda that we are tackling here. And we want to do it as we did with Medicare: on a bipartisan basis. So talk about tax enforcement and the tax gap.

Mr. DODARO. Yes, I would be happy to, Senator Wyden.

First, our chart vividly illustrates the challenge to tax enforcement. On the left side, where you have withholding for people, there is very little that is contributing to the tax gap. The green is where you have investment income reported—again, very little toward the tax gap. So the enforcement challenge really under current law, in addition to simplifying the tax code—and we recommended that over a number of years—is to tackle what is in the red portion of this chart, which is largely business income and partnership reporting. The IRS really does not have good information on the compliance issues associated with that reporting, so we have suggested that they implement a strategy. They are working on a strategy. They do not have it implemented yet. They do not have a time frame for it yet. But I would encourage them to consider that.

We also do not think they have good return-on-investment information; in other words, which enforcement strategy yields the most amount of income. For example, for examinations opened in 2007 and 2008, they have IRS focused, over half of them, on people reporting income under \$200,000 versus over \$200,000. There is much more return on their investment based on their data for focusing on people with incomes over \$200,000 rather than under \$200,000.

Senator WYDEN. Can I get one other question in very quickly, Mr. Chairman? And I really want to defer to the expertise of Senator Carper, who has led this committee on this question of rooting out health care fraud for years.

Just very briefly, because I know my colleague is going to ask about these issues as well, how do you make sure that as you try to root out health care fraud, you strike a balance so as to not create a lot of new regulatory burdens and hassles for the overwhelming number of providers who are honest and scrupulous? How do you do that? How do you strike that balance? I will let my colleague talk about health care, so if you could just answer that quickly.

Mr. DODARO. Sure. The real strategy here is to have an integrated strategy where we are preventing improper payments from occurring in the first place. The reason you have audits later is to inform you on how you can better screen. You have to keep bad actors out of the system. There need to be real, stringent controls on providers and suppliers when they are enrolled in the first place, and we have many recommendations to improve that process. So, keeping bad actors out, using technology to do predictive analytics to detect patterns ahead of time and stop the improper payments from the beginning, are the very best ways to protect the government and the taxpayers. This is preferable to intrusive, after-the-fact audits on the provider and preparer community. And that is what CMS is not doing enough: learning from what is happening after the fact, to prevent it from occurring up front.

Senator WYDEN. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Let us see here. Senator Roberts is next.

Senator ROBERTS. I am not sure I am next, but thank you very much.

I am going to be a contrarian here for a moment, but first of all, I want to thank the chairman for really highlighting the severity of this problem. It is really tearing at the public trust, as well as a backlog of a million claims, a 13-percent error rate, this jumping up this last year here 18 percent. And I want to thank you and Senator Wyden for working on a bipartisan bill. Senator Wyden, thank you very much for coming up with the term “byzantine regulatory process.” I think that pretty well describes it.

Obviously, our auditing needs improvement. You know we are currently using several different types of auditors with different processes and documentation requirements. But let me point out that part of that is also causing a tremendous burden on providers who are trying to be responsive. Not all providers are guilty of whatever some auditor says that they are.

We are losing doctors; we are losing nurses. Access to medical care is a real problem, and that has to be considered with regards to what we are trying to do in agreeing upon a definition of improper payments.

As an example, does a missing signature or date mean it is an improper payment? Or is a better term “improper documentation”? Obviously, I think it is the latter. Improper payments calculations and the audits should focus on payments for goods and services that a patient did not medically need when paperwork is the issue.

But what happens in the real world out there—again, we just talked about this, and thank you for coming up, and thank you, by the way, for the job that you are doing. The 2-day rule, the 96-hour rule, you know, people come into the hospital, and I told you about an example of an elderly lady who came in, who evidently had a stroke, but she was in the emergency room, and then she was just sort of discharged sitting out there, went back home, came back again when she had a stroke, and then she died. I happened to be in the hospital when that happened.

And so people who do these audits are hired. They are independent contractors. They get gold stars for citing people. I understand that. And I understand that we have to have an honest auditing system that really works.

So that leads me to my question. In your written testimony, you indicate what an agency must do in order to be compliant with the Improper Payments Elimination and Recovery Act, and you know that one of the things an agency must do is submit a plan to Congress describing what it will do to bring the program into compliance.

Do we have a definition of improper payments?

Mr. DODARO. Yes, there is a definition in the statute. It is cited on the first page of our testimony, if you go to the bottom of page 1, Senator. “Improper payments” as defined by statute is 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. Among other things, it includes payment to an ineligible recipient, payment for an ineligible

good or service, and any duplicate payment. And also by regulation, according to OMB's guidance, it instructs agencies to report as improper payment any payment for which insufficient or no documentation was found.

Senator ROBERTS. Well, that is a pretty broad definition, and my problem with it is that, when you have an auditor who comes in on the RAC program—and I think that they actually put the providers on the rack—not every hospital administrator or doctor or nurse or provider is doing things that amount to fraud and abuse. And in the rural health care delivery system, we have some real problems.

I have a final question. Could you tell me who the accountable senior IRS official is for the EITC? Does this person have a performance agreement? That is according, I think—part of the plan that we have is, the agency must designate a senior agency official who is responsible for bringing the program into compliance. Who is that?

Mr. DODARO. That is the Deputy Commissioner for the IRS for Operations Support, Jeffrey Tribiano.

Senator ROBERTS. Oh, dear. Well, the distinguished chairman and ranking member have had him before us before. We will have to follow up. Thank you for your service.

Mr. DODARO. Thank you, Senator.

The CHAIRMAN. Senator Thune, you are next.

Senator THUNE. Thank you, Mr. Chairman. Sir, nice to have you here. Thank you, and I appreciate your service.

I think it is important that we have a continuing dialogue to ensure that agencies and Congress are properly safeguarding tax dollars. And one of our utmost responsibilities is to ensure that Federal programs are being run efficiently and effectively, and it is my hope that the administration first starts by looking at this improper payment area to determine where we can find some of those savings. We certainly ought to be doing that before we ask the American taxpayer to do even more than they are already doing.

I want to ask about—I know you have touched on it and probably been asked about it a lot already. I apologize if you have. But the EITC continues to be a major source of fraud and erroneous payments. And while the EITC is, in fact, a tax credit, the large majority of the budget impact of this program comes in the form of spending. In other words, the EITC is really a spending program in the form of a refundable tax credit. The EITC has consistently had an error rate between 22 and 27 percent, and improper payments from this program have totaled nearly \$80 billion in the past 5 years alone. The total amount, I might add, of improper payments since fiscal year 2003 is anywhere from \$124 billion to \$148 billion, which I think the chairman noted in his opening remarks. And, as you may know, the Obama administration proposed making permanent the more generous temporary EITC provisions enacted as part of the stimulus bill in 2009.

So, given what GAO has reported regarding improper payments in the EITC program, isn't it likely that extending these more generous EITC provisions is likely to mean more improper payments than if we allow the more generous subsidies to expire after 2017?



Mr. DODARO. I think the best way to safeguard future improper payments would be for the Congress to enact legislation to regulate paid tax preparers and to accelerate the filing date for W-2 information so the IRS has that information up front to validate. If these two things are not done, you are going to continue to have improper payments, in our opinion, in EITC under the current system or any future system. So you have a structural problem there that is built into the design of the program, and the Congress needs to act in order to shore that up and to make sure the IRS effectively implements both of those two provisions. We need to regulate tax preparers, accelerate W-2 information, and use that information to make sure that ineligible people do not have access to the tax credit.

Senator THUNE. So if you are looking for a better screen to ensure that at the preparer level and at the IRS level, it is getting the information sooner, as you are suggesting. But one of the things that has generated a lot of controversy is the suggestion that, for this refundable portion of the tax credit, there be a valid Social Security Number submitted, which is already required for certain other tax benefits, and some have suggested that a Social Security Number should be required for each child who is claimed under the credit. And again, as you know, as I mentioned earlier, improper payments associated with the additional tax credit have increased from \$62 million in 2000 to roughly \$4.2 billion in 2010, which is a staggering increase.

Has GAO looked at whether requiring a valid Social Security Number would be likely to have the intended result of reducing fraud in this program? Do you have an opinion on that approach?

Mr. DODARO. Well, I would think most information, any information, that IRS can have to help it verify that it is a legitimate charge will be helpful, including Social Security Numbers.

Currently, children claimed for the EITC are required to have valid Social Security Numbers. For the Additional Child Tax Credit, children are required to have taxpayer identification numbers, which may either be valid Social Security Numbers or Individual Taxpayer Identification Numbers issued by the IRS to resident and nonresident foreign nationals and others who have a tax reporting requirement. We are currently reviewing the design and administration of refundable tax credits including the EITC and the Additional Child Tax Credit at the request of this committee. We plan to report our findings and any recommendations in Spring 2016.

Senator THUNE. Okay. So that is something that you think would make sense—

Mr. DODARO. Yes.

Senator THUNE [continuing]. As a check in the program?

Mr. DODARO. Yes.

Senator THUNE. Okay. Thank you. And I was going to—Senator Roberts hit on my question about who is in charge at the IRS on this, so I will, with that, yield back, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you, Senator.

We will now turn to Senator Carper.

Senator CARPER. Thanks, Mr. Chairman. I want to thank Senator Wyden for the kind things that he said about our efforts earlier, and I just want to compliment you, Mr. Dodaro, for the great

work that you and your team do to help us spend taxpayer dollars more effectively. You do a great job, and it is a joy to work with you.

While Senator Thune is still here, I want to say a couple of things to follow up on his points. Senator Thune, I just want to follow up on a couple of things, if I could, and thanks for what you raised here.

As you know, the reason why we have the Earned Income Tax Credit is because we want to incentivize people to work. We want to make sure that when people work, they are better off than when they are not working. And that is why Ronald Reagan was such a big fan of the EITC program. And frankly, I am too. I think most of us are.

And Mr. Dodaro has actually pointed out a couple things that we can do to reduce this problem of bad claims being filed, bad returns being filed, a lot of them by these paid tax preparers that are not regulated. It is a big problem. The timing in terms of filing W-2s, that is a big problem. Those are things that we can fix. And if we do, folks can still get the EITC. Folks who should not be getting it or who should not be getting as much would not get it. And we can make sure that people continue to be incentivized to work—that is what we want to do—and we want to make sure that we protect money that is in the Treasury that should not be going out to folks who should not be getting it.

I hope that we will not just have a conversation about this. I hope we will do it. I hope we will do it. And I know this is something near and dear to the heart of Senator Wyden, and I thank him for his leadership on this as well.

I want to go back to one of your earlier charts. You put up a pie chart right at the beginning. Could someone just put that back up again there for just a minute? The pie chart indicates where the improper payments are coming from, and you have the blue, which is Medicare, and you have the red, which is Medicaid. We have the yellow, which is the EITC, and then some others.

I do not think anywhere on this pie chart is the Department of Defense. And when you think about spending in the Federal Government, think of a different pie chart. Half of Federal Government spending is entitlements. Maybe another 5 or 10 percent is debt service. The rest is discretionary spending. More than half the discretionary spending is defense. Less than half of the remaining spending is nondefense discretionary spending.

There is not one dime's worth of improper payments up here that is cited by the Department of Defense. It is crazy. And part of the problem is that they have not yet, any of them—Army, Navy, Air Force—been able to show auditable finances. And you have worked with them on this. I have. Senator Coburn has worked with them on this for years. But a big part of our problem is not even recorded, and it needs to be.

We have been working on improper payments, Tom Coburn and I, for, gosh, almost a dozen years. And he is gone now, but his legacy lives on in this regard.

Initially, we said we wanted agencies to record improper payments. They did. And as time went by, that number went up, up, up, up, up, up, because more agencies started reporting, except for

DOD. And then we said in 2010, we want you to not only record improper payments, but we want you to stop making them. And not only do we want you to stop making them, we want you to go out and recover money that you can. And we want you to reward your supervisors, in fact, to really judge their performance in part by how effectively they are complying with improper payments laws. We have done all that. That is on the books. And now we just have to make sure that we act on some of the stuff that you are suggesting, and I hope that we will.

I am going to ask you to give us a to-do list, and some stuff you have already said, but we need to hear it again, and maybe we will get off our duffs and do it. Just repeat some of the stuff you said that we need to do in order to go after some of the improper payments that are remaining, to get after DOD to do their job, and to make sure that we ratchet down this tax gap. Please, just hit us with it again.

Mr. DODARO. Sure, sure. Well, I will start with DOD. There is a bit of DOD in the green, but it is not reliable. We have said that. We think they should be doing a lot more on improper payments. And you are quite correct. In my opinion, the highest-risk area in the Federal Government for financial mismanagement is the Department of Defense. They are the only major department and agency that has not been able to pass the test of an independent audit. They are working on it, but they are a long way from accomplishing that goal.

Second, what is not in there is Temporary Assistance for Needy Families' improper payment estimate. They spend about \$16 billion a year. A third of that is still cash assistance. HHS is saying by statute they are not able to get the information they need, so I think Congress needs to clarify that authority as well.

We have recommended that the Congress regulate paid tax preparers. Sixty percent of the returns filed by paid tax preparers had errors, according to our analysis, which was verified by the IRS.

We believe the reporting date for W-2 information to the IRS should be sooner. Right now they do not get it until April. They need to have it earlier in the filing season so they can match it up. Last year they estimated they missed \$5.8 billion in identity theft in addition to the Earned Income Tax Credit problem. So this could help in both regards, but they have to be able to use it and modify their systems to be able to handle it. So following up on that would be a good idea.

We also think Congress should consider giving IRS additional math error authority more broadly so that they can match against records that the Federal Government has collectively and correct things up front. This will save taxpayers a lot of time and effort. If they do not agree with it, they can contest it with the IRS. But it will save IRS resources from going after things later that they know they could have fixed earlier in the process.

I think that Congress also ought to have more oversight hearings on these individual agencies to bring them in and to discuss with them what their corrective action plans are and to make sure they are bringing down the improper payment estimates. We have cited in our testimony that there are five program areas that, for 3

straight years, have not been in compliance with the law. And I would start there in the congressional oversight process.

The CHAIRMAN. Well, thank you. Your time is up, Senator. We will turn to Senator Portman.

Senator CARPER. Mr. Chairman, let me just say, that is a pretty good to-do list. We need to do it.

The CHAIRMAN. I agree with you. That is a darn good list. Senator Portman?

Senator PORTMAN. Thank you, Mr. Chairman. I appreciate it. Thanks for your work on all kinds of issues: the tax gap we talked about today and, of course, improper payments.

Mr. Dodaro, you are a watchdog, and it is discouraging to me when I see the fact that between 2013 and 2014, the most recent year for which we have data, we have actually seen improper payments go up, not down, after years of some progress. This committee and the Ways and Means Committee I served on previously focused a lot on these issues. The IRS reforms and other things made some incremental progress, but we are going the wrong way. And so we do need your ideas, and we need you to continue to be vigilant on this.

You talked about the improper payments in the EITC. You talked about health care. If we look at the chart up there, you have talked about Pentagon spending recently. One that you have not talked about is the Affordable Care Act. A lot of our focus is on the mandatory side, and the improper payments. This is a whole new mandatory program, of course, a big new entitlement program where we do not have the verification. So one reason I think we are losing ground here is, we have started new programs over the last 5, 6 years that actually create additional challenges, and with the Affordable Care Act, specifically income verification for the exchanges.

You testified before the committee in July on your secret shopper investigation. You found serious integrity problems in the process for verifying eligibility for the ACA subsidies. It was unbelievable. I think there were 10 or 12 secret shoppers, and I think 9 or 10 of them cheated the system. And that is obviously a huge concern there.

You told us that you were looking into that, that you were going to work on it, but you said you were having real trouble getting from HHS information about the exchanges, about the customers, the information you needed to evaluate whether subsidies are going to the right people, people who are entitled to them.

Can you give us an update on your investigation on that front and whether HHS has been cooperative in expeditiously getting you the documents and data that your team needs to analyze this?

Mr. DODARO. Yes, we are in much better shape now. We have had several meetings with them. We have gotten all the information that we need in order to complete our study and our investigation. They are listening more carefully now to our recommendations and suggestions. However, the HHS IG and we have both been looking at the accuracy of the data provided by CMS and the State exchanges, the marketplaces, to IRS and have made recommendations to IRS that they need to check some of that information so that they can accurately match it during the return proc-

ess. We are looking at all aspects of the controls throughout that whole system.

So we are getting better cooperation in getting the data. We are still doing work, and we expect to have additional recommendations, but we are getting cooperation from CMS.

Senator PORTMAN. Okay. We look forward to that report, sooner rather than later. And again, I appreciate the fact that you are going to be our watchdog on that.

On the Digital Accountability and Transparency Act, you and I talked about it a little just prior to the hearing, so I wanted to mention it. As you know, this is legislation that was passed back in 2013, and the notion is to put all grants and contracts in a transparent way online, let people see them, help you in terms of your ability to be that watchdog, but also help us here in Congress to do our oversight responsibilities and allow taxpayers to see where their money is going. It expands the Federal Funding Accountability and Transparency Act. It is a big new improvement in the quality of spending data. And my question to you, I guess, is whether you think it is working well.

Section 5 of the DATA Act requires OMB to determine whether it is possible to automate reporting by grantees and contractors, and section 5 was meant to ensure that we are going to get better information, in a standardized electronic format, to determine whether they are able to use that format to automate the creation of reports and reduce the compliance costs, among other things, to these grantees and contractors.

To my understanding, OMB has yet to recruit any grantees or contractors to participate in the pilot program that was set up. Are you investigating whether OMB is complying with this part of the law?

Mr. DODARO. Yes, we have efforts under way to look at this. You know, we are not required by the law to report until 2017, but I have started right in the beginning. I want to make sure that this is done properly.

So we are looking at that. I am concerned that they have not identified the proper pilot for the contract side in that area, and they have not finalized plans yet for the grant side, although they are a little further ahead in the grant than the contract side. But they have to start it. Under the law, they have to have a 12-month period of time under the pilot. So if they do not start soon, this summer, they are not going to be able to meet that requirement. So we are working on it.

I am also concerned that they have yet to come up with a program inventory, which was required by the 2010 Government Performance and Results Modernization Act. Right now the government does not have a complete inventory across the Federal Government of all its programs. As a result, when we go in and try to identify overlap and duplication among Federal programs, it takes a lot of effort and work to be able to do that.

I am also concerned that the governance structure get established, because there is going to be lost time during the change in administration.

Senator PORTMAN. Senator Warner and I were the authors of that legislation. We are concerned about the implementation, and,

again, we have talked about this privately, but I hope you will continue to stay on top of it. You talk about the grantee portion of it. HHS has been given the lead on that, but OMB has not designated anyone, to my knowledge, to take the lead on the contractor part. And so I am concerned that they are not meeting their deadlines, and for you to do your job and for us to do our job, we have to have better financial reporting. I assume you agree with that.

Mr. DODARO. Definitely.

Senator PORTMAN. And at all the agencies and departments, not just DOD.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Coats?

Senator COATS. Thank you, Mr. Chairman. I want to first make a statement and thank GAO and Mr. Dodaro for what they do. As some of my colleagues know, I do a waste, fraud, and abuse speech on the floor every week to point out some of the money that we could save the taxpayer or use for better, more essential Federal Government obligations. It is amazing the amount of money out there that could be put to better purpose, and GAO has been very helpful in terms of giving us documented information on a non-partisan basis.

So there is plenty of work to be done, but I am very interested here in the statement where you say that addressing the estimated \$385 billion net tax gap will require strategies on multiple fronts, and one of those you say is tax code complexity. Senator Wyden and I have a bill in that greatly simplifies this. We all know the tax code is complex beyond anybody's comprehension. I suppose a lot of the problems that the taxpayers and even tax preparers face is that understanding this monstrosity of a code requires almost 24/7 work to keep up with it. I had three major tax classes in law school. I cannot begin to do my tax return because, if I do not spend full-time on what is happening and changing, it is almost impossible to do.

I appreciate the chairman's statement here relative to how we ought to go about this, and I know he is on board also, and I think virtually every member in this committee is on board in terms of getting real meaningful tax reform that would solve a lot of this problem, because a lot of this, I think, just comes from complexity.

Now, that is really our responsibility. I am disappointed we have not been able to get there, even though there is really an understanding of the problem and a commitment to do something about it. But as you know, it has been 25-some years since we have had that reform, and it just has to be a high priority, and I think it will solve an awful lot of our problems.

I do want to get a couple questions in to you. According to your testimony, Medicare reported an estimated \$60 billion in improper payments in 2014, with Medicaid reporting about \$17.5 billion. You outlined several recommendations that GAO provided to CMS to reduce these improper payments as well as their need to commit to do so.

But in your report, you said, and I quote, "While CMS has demonstrated efforts to reduce improper payments in the Medicare program, estimated improper payments have remained unacceptably

high.” So where do we now stand in terms of these recommendations, the implementation of these recommendations at CMS? And what has happened here in terms of your recommendations, their agreement to implement those, and the payments remaining improperly high?

Mr. DODARO. They have implemented some of the suggestions that we have had, but there are many that they have not yet done. First is to strengthen the verification of providers and suppliers. The Affordable Care Act required them—or encouraged them—to establish, for example, a surety bond up front for high-risk providers—

Senator COATS. And that act was passed in 2010.

Mr. DODARO. Twenty-ten. And they still have not done that yet.

Senator COATS. Well, what is their explanation?

Mr. DODARO. They are still considering it, is what they have told us. But they have not done it, so I have written to them. We have encouraged them to implement that.

I am very pleased that Congress in the most recent legislation on payments to physicians mandated that they remove the Social Security Numbers from the Medicare cards and provided funding for that. I have been trying to get that changed for a number of years, but CMS has yet to implement that. I mean, Congress has given them the authority and the funding, and I want to make sure they expeditiously do that. That is inviting identity theft to the program and the misuse of those Social Security Numbers.

Senator COATS. Well, Mr. Chairman, I would—

Mr. DODARO. Senator Coats, if I might.

Senator COATS. Yes.

Mr. DODARO. I have sent a letter to the Secretary of HHS outlining the open recommendations in these areas. I would be happy to provide this committee a copy of that letter.

Senator COATS. Well, I think that would be very helpful.

Mr. Chairman, I would urge that we as a committee, you as chairman and the vice chairman, also send a letter or follow up on this \$60 billion. It has been 5 years since the ACA has been implemented, and CMS is still considering how to follow these recommendations. So I think they need some leverage here, and I think—

The CHAIRMAN. You raise a good point.

Senator Coats [continuing]. The chair and vice chair and our committee can provide, hopefully, that leverage.

The CHAIRMAN. I think so. That is part of what we intended to do anyway.

Senator COATS. Okay. I am over time here, but thank you.

The CHAIRMAN. Senator Menendez, you are next, except Senator Roberts has a quick question. Do you mind him asking it?

Senator ROBERTS. Well, on this point, Andy Slavitt came in to see me, and he has come in to see all of us, I think. I hope. And we had a whole laundry list about what CMS is doing or not doing—more especially, doing. And the health care delivery system, I think CMS has just called it a mess. And I hate to say that, but that is where it is. So we have some pretty tough questions for him. And I note that we are all writing letters back and forth. Did

you ever call Andy and just say, "Hey, where is the problem?" Have you ever done that?

Mr. DODARO. I have talked to him briefly. I know our teams have met with him a lot. I have not had an extended conversation with him, but I will do so.

Senator ROBERTS. Well, I have some pretty serious questions for him, and I had some doubts about whether he should have been confirmed, but he was most responsive. Of course, that is what you do if you want to get confirmed. You ask the tough questions, and they say, "Sure, we are going to do that." But if they are still studying this—Senator Coats has just brought this up. Part of the problem is us, really, with the tax code, and Senator Wyden knows that, and the chairman knows that. But I just do not understand, if we are having a really big problem, especially with the questions that we have brought up, why don't we just call him, have lunch with him? He seems like a reasonable guy.

The CHAIRMAN. We will follow up.

Mr. DODARO. Yes. I had a meeting with Secretary Mathews Burwell, and she said that implementing our open recommendations was going to be a top priority. We have had regular sessions with CMS to go over our open recommendations. But I will follow up with Mr. Slavitt as well.

Senator ROBERTS. Well, same for Mr. Koskinen. We need to get you all in one room.

Senator WYDEN. Mr. Chairman?

The CHAIRMAN. Senator Wyden?

Senator WYDEN. I want to work with my good friend from Kansas, but I know Senator Menendez has been waiting a long time.

The CHAIRMAN. Yes. Senator Menendez?

Senator MENENDEZ. Thank you, Mr. Chairman.

I fully support efforts to reduce improper payments government-wide and believe we need to focus our limited resources in areas that give us the biggest bang for the buck.

Now, I hear a lot of my colleagues focus on improper payments in the EITC, and while there is no doubt that improvements can be made there, I think we need to get some of the facts straight.

First, the EITC was signed into law by President Ford in 1975 and expanded by President Reagan as part of the 1986 tax reform package. It has been recognized then and now by Republicans and Democrats, liberal and conservative economists, as one of the most effective public policy tools against poverty, particularly childhood poverty. It mitigates the regressive effect of payroll taxes and gives low-income workers a strong incentive to get off the sideline and into the workforce.

So, first and foremost, we need to recognize just how important the EITC is to those struggling to get a piece of the American dream and ensure that efforts made to improve the integrity of the program do not burden deserving families and make it more difficult for them to claim the credit.

So I think you need to fully understand the true extent and causes of high error rates. To echo some of my colleagues, the improper payment rate does not mean the Federal Government overpaid claims by this amount solely. Indeed, this figure also includes



underpayments and payments made without full documentation which may very well be legitimate.

In fact, Nina Olson, the National Taxpayer Advocate, testified last year that more than 40 percent of EITC claims that initially lacked proper documentation and subsequently received assistance from the Taxpayer Advocate Service were later found to be valid.

Now, I am in no way trying to disregard the issue of improper payments, but it is important to understand the true scale of the problem and not some inflated exaggeration.

We also need to understand what factors drive the prevalence of improper payments in order to craft effective countermeasures. While outright fraud certainly exists, the fact of the matter is, a larger portion of improper payments is the result of an extremely complex and confusing set of guidelines that are very difficult for low-income, often unsophisticated taxpayers to comply with.

As it stands, the IRS rules for the EITC are nearly twice as long—twice as long—as the 13-page instructions to comply with the AMT, or alternative minimum tax, which has been consistently derided by both parties as overly burdensome and needlessly complicated. There are some who propose making these requirements even more onerous. Let us add to the 13 pages. Let us add another 4 to 5 pages of documents full of dense, difficult-to-understand instructions.

Now, such a requirement, in my mind, would be counterproductive, causing more errors to occur, forcing more low-income taxpayers to use high-cost tax preparers, including nonregulated ones, which are responsible for the highest EITC error rates. Now, this may help buttress the bottom line of paid tax preparers, but it will only exacerbate the improper payment rate and leave vulnerable families worse off than they are today.

So, if we are serious about addressing this issue, there are several concrete steps that we could take today that would significantly reduce the error rate while not increasing burdens and costs on taxpayers. The committee had a perfect opportunity just last week when it was scheduled to mark up a bipartisan, common-sense bill to combat identity theft and tax return fraud. Among other provisions, the bill would require paid tax preparers to register with the IRS and receive education and training. With 68 percent of EITC claimants using paid preparers, the majority of which are unregulated, we are leaving families vulnerable to unscrupulous actors, some who are just trying to make a quick buck. Nina Olson as much as said that. She said, “Simply stated, unenrolled preparers are the make-and-break point for the EITC compliance strategies.”

Now, I will point out, as proof of that, Mr. Dodaro spoke—and I appreciate your service—about the ranking member’s home State of Oregon and how they achieved a 72 percent higher accuracy rate than comparable paid preparers in other States. How did they accomplish this? They have been regulating paid preparers since the 1970s. So, if we are serious about reducing improper payments while not burdening low-income families, it seems to me we need to regulate paid preparers.

So, Mr. Chairman, I hope we look at this issue not as a way to slay it, which would ultimately undermine the whole purpose of re-

warding work and helping families get into self-sufficiency, but to correct it. And I appreciate the chairman's time.

The CHAIRMAN. Well, thank you, Senator.

Senator Grassley?

Senator GRASSLEY. Before I ask my questions, thank you for the good work you do, and particularly something that maybe missed the eye of the public: you did good work on the Marine audit.

I want to address your agency's recent study on the Red Cross and some of the challenges you faced completing it. As I understand it, on June 30th last year, the CEO of the Red Cross wrote to the original requester, Representative Thompson, and asked that he "end the GAO inquiry that is currently under way."

Attempting to shut down a GAO inquiry is very unusual. When my staff spoke with GAO personnel about the Red Cross study, it was clear that the Red Cross did not provide unfettered access to information. As a result, your agency narrowed its review of the Red Cross. This week, I wrote a letter to you requesting more detail on challenges you faced when dealing with the Red Cross.

The first question: I cannot overstate how important it is that the GAO be provided the necessary assets to complete a thorough study. If a study subject is not cooperative, GAO must have the tools necessary to get the information needed to complete the study. And GAO should not have to alter any study because of uncooperative subjects. What mechanisms are in place to ensure that the GAO acquires the information and material necessary to complete a study from a non-cooperative subject like the Red Cross, but not just limited to the Red Cross?

Mr. DODARO. Yes. Our statute requires access to records by departments and agencies. If they are uncooperative, what we do is, we try to work through it with them. I will sometimes have conversations as well. But the law requires that if an agency does not give us the information, we have to go to court to sue the agency. We have only done that one time in our history, and the court ruled we did not have standing in order to sue. And so I have been trying to get Congress to pass legislation to clarify our authority to enforce our provisions, but have been unsuccessful so far.

Senator GRASSLEY. Okay. In a recent report, GAO found spending on Medicare Part B drugs in the 340B Disproportionate Share Hospitals was 140 percent greater than non-340B hospitals. The GAO concluded that there were no other explanations for the increase than the financial incentives created by the 340B program. The GAO report was roundly criticized by 340B hospitals.

Do you continue to stand by your conclusions? Or have you been convinced that there are other explanations for the differences in spending?

Mr. DODARO. We stand by our report and believe Congress should pass the law to remove those incentives.

Senator GRASSLEY. Okay. Thank you for that answer.

Have you had to back off of the Red Cross investigation because of Representative Thompson's request? Or can you move forward as you wanted to?

Mr. DODARO. Well, we moved forward as we wanted to, but narrowed the scope. We were initially going to look at their internal evaluations as well as external evaluations. We decided, because of

the problems we were having, to focus on the external evaluations and made a recommendation to Congress that Congress provide greater external evaluations of the Red Cross and their role in responding to emergencies.

So we believe we produced a very good report with a good recommendation to the Congress, and I look forward to further opportunities to help Congress oversee the Red Cross.

Senator GRASSLEY. Thank you very much.

The CHAIRMAN. Well, thank you.

Senator Brown, you are next.

Senator BROWN. Thank you very much, Mr. Chairman.

I guess I am not surprised today that we do hearings like this. I know the Earned Income Tax Credit is so important. Senator Carper talked about it. I know Senator Stabenow and Senator Wyden are such strong supporters of it. We know that the tax credit in 2013 lifted 9 million Americans, including 5 million children, out of poverty. So what do we do here? We go after that instead of noncompliance for upper-income taxpayers. I mean, I know that the United States Senate sings with an upper-class accent every damn day of the year. And I also know that we spend way more time going after the least privileged than we do the most privileged in this institution, and it is just sort of shocking. Look at some of these numbers that we have seen.

The improper EITC payments we are looking at make up less than 5 percent of our overall tax gap. Unreported business income on individual tax returns in 2006 reduced revenues by \$122 billion. We are not addressing that today. I am hopeful that we will on this committee.

But keep in mind too, we are talking about improper payments. Some of my colleagues conflate improper payments with fraud, with abuse, but improper payment is defined by all of you as incorrect payments, sometimes too much, sometimes too little, and rarely, much less often than more often, caused by some mistake, not by any fraud committed by the taxpayer. All the steps and the talk about improved compliance for EITC focuses on simplicity not complexity. The efforts to make this more complex are, frankly, certainly wrong-headed policy bordering on immorality. We obviously know that people who signed up for the Earned Income Tax Credit probably do not dress like this, probably do not have the educational background you do, probably do not have the sophistication of the staff sitting behind us. We know that. So we should aim toward simplicity not complexity in this. That is why this hearing to me is so frustrating. Error rates are rooted in already too complex compliance requirements. Congress knows that.

So here are my three questions. I will take them together, and if you could, Mr. Dodaro, walk us through them. How well does the public understand EITC requirements? That is fundamental. Second, how many of the problems now already in the program stem from complexity? And third, what does Congress need to do to help improve compliance?

Mr. DODARO. Sure, I would be happy to address those questions. Just a couple clarifications on your statement.

Number one, my statement today does cover the tax gap and areas that need to be addressed in the tax gap—

Senator BROWN. I was talking less about your statement than some of the comments of my colleagues, not just today but throughout the Congress and the Senate. Thank you.

Mr. DODARO. Yes, I wanted to be clear on that.

Second, the definition of improper payments is by statute, not by something that we created.

Now, with regard to your questions on—

Senator BROWN. But again, conflating improper payments with fraud and abuse is erroneous, correct?

Mr. DODARO. Yes. I mean, all fraud is by definition an improper payment, but not all improper payments are fraud, for sure.

Senator BROWN. Well said.

Mr. DODARO. Now, with regard to the EITC and your questions, complexity is definitely at the heart of the problem here with the error rates. We are not suggesting it be made more complex. What we are suggesting that the Congress do is regulate paid tax preparers. You know, millions of people use them. We have found in an undercover investigation we did of 19 tax preparers, only two gave us the right answers, and seven had very erroneous information that put taxpayers and the preparers at risk of fines and penalties. Sixty percent of the returns, we believe—we have estimated and the IRS has agreed—prepared by paid tax preparers have errors. So we are suggesting better regulation. Oregon has done this as a State. Their error rates are significantly lower than any other State in the country because they have regulated paid tax preparers. So that is number one.

Number two, we believe Congress should accelerate the filing dates for W-2 information. Senator Brown, IRS does not get the W-2 information to compare with returns until April. So for anybody who files before April, which most people do, they have limited information to check.

Third, we think if you give IRS the ability—it is called “math error authority”—to check against records the Federal Government already has in reviewing a return, they could fix a lot of these problems right up front.

So those are three things Congress can do. It does not change any of the complexity of the program, but we believe it would attack the root cause of the higher error rates and any potential fraud.

Senator BROWN. Thank you. Could I ask one really quick question, Mr. Chairman?

I have worked on legislation to allow people who at some time of the year had earned, say, 30, 40, 50 percent of their Earned Income Tax Credit, which they will not get back until February, March, April, to get up to a \$500 advance if their car breaks down in January or in October. They could get a \$500 advance that would be taken out of their check when they file. Because what we have seen is, a number of people with EITC, even though they are going to get that \$2,800 in April or in March, they cannot quite make it through the year. So they go to a payday lender and they borrow and they borrow, and they go on that downward spiral and pay huge interest rates. Is that something that makes sense to you?

Mr. DODARO. I think that is an intriguing proposal, and I would be happy to think about it and provide a response for the record. Senator BROWN. I will put it in writing and in detail. Thank you. [The information appears in the appendix on p. 75.]

Senator BROWN. Mr. Chairman, thank you.

The CHAIRMAN. Senator Casey?

Senator CASEY. Mr. Chairman, thanks very much. Mr. Dodaro, it is great to be with you, and I always appreciate your good work and your Pennsylvania roots. We are grateful for that.

I wanted to ask you about the Senior Medicare Patrol, which I know many here have heard of and support. It empowers seniors to help the government fight waste, fraud, and abuse in the Medicare program. Over the life of the program, it saved something on the order of well over \$100 million.

Is there anything you can tell us about additional steps we could take to empower the Senior Medicare Patrol or similar efforts to reduce waste, fraud, and abuse?

Mr. DODARO. GAO has not evaluated the Senior Medicare Patrol. The Department of Health and Human Services Office of the Inspector General has collected performance data for the Senior Medicare Patrol since 1997. In 2014, funding for Senior Medicare Patrol projects totaled \$15.5 million. For 2014, HHS OIG estimated that the projects achieved \$942,159 in recoveries, savings, and cost avoidance. However, the OIG stated that the projects may not be receiving full credit for savings attributable to their work.

In GAO's view, a multi-pronged approach to fraud reduction—which includes prevention, detection, and prosecution—is necessary. Engaging beneficiaries and others in this effort can be a valuable part of this process. As always, ongoing evaluation of these efforts to determine their effectiveness is also critical.

Senator CASEY. And just along those lines, are there ideas you have based upon this report? Because a lot of the conclusions that you have reached are very troubling for us because of the obligation we have to make sure that dollars are spent not just without any waste, fraud, and abuse, but efficiently and effectively so the dollar achieves the result the taxpayers intend. So I hope that as you propose recommendations, as you have already, and work with us on these, you can give us examples of strategies that will work, like Senior Medicare Patrol.

The other issue I want to raise is the whole issue of resources, IRS resources in particular. I am in the camp that believes that Congress should actually fund the IRS at levels that are consistent with what the administration asked for for 2016. I am also in the camp of believing that if you are a member of Congress, you cannot lecture and then not support essential resources. It is one thing to yell at an agency, criticize an agency, and another to then vote against funding which is essential for tools.

I was an elected State Auditor General for my State for 8 years, and I know that resources can often be the only way you can fix a problem. I was pretty tough on State agencies when they engaged in waste, fraud, and abuse, but I was also willing to support resources they need. Sometimes it was IT; sometimes it was just better practices.

But I guess my question on this is: is there anything in your review or anything that you can tell us about the issue of resource constraints impacting, in this particular case, IRS's ability to address improper payments or the tax gap?

Mr. DODARO. Yes, I have two sides to this. Number one, it is pretty clear, if you put additional resources into enforcement programs, you will get additional revenue over time. But it is not quite clear what enforcement strategy yields the highest degree of yield.

We have also said that the IRS really could better use the resources that they have. They do not have a good strategic plan to use online services, for example, to provide access to people 24/7 so they can research and get answers to their questions. We also illustrated that if they shifted a small amount of money in enforcement from lower-yielding exempt programs to higher-yielding ones, they could get \$1 billion more.

So I think both questions are fair. Do they have or need more resources? But also, are they using the resources that they have most effectively? And I think Congress should ask both questions.

Long term, I think Congress needs to be concerned about the impact on voluntary compliance, with regards to the resource levels at the IRS. So far, voluntary compliance has been pretty stable over a long period of time, which has both positive and negative effects in terms of the tax gap. But I am concerned over time that, without proper resources, there could be an erosion of voluntary compliance, and I think if that happens, it will be hard to get that back. So we will keep a wary eye on that as well.

Senator CASEY. Thank you very much.

The CHAIRMAN. Senator Stabenow?

Senator STABENOW. Well, thank you very much, Mr. Chairman. I think this is a very important hearing. And thank you for all of your work, Mr. Dodaro.

I do want to associate myself with, I think, Senator Brown's very important comments. When we look at the total estimate, whether it is overpayments or underpayments, the improper payments we are talking about are really dwarfed by the overall loss in tax revenue that is owed but not collected, what we call the "tax gap," because of fraud or abuse or whatever else. And I do think it is important to just register that we have choices about where we focus, whether it is on the working poor, trying to lift themselves up to get out of poverty into the middle class, or whether it is businesses shipping jobs overseas using tax loopholes where we have lost middle-class jobs, which is very much where I would like to see us focusing our efforts.

I do want to start, though, and just as a statement speak for a moment about Medicare. I know that my friend Senator Roberts raised the importance of looking at the fact that, when we look at Medicare, it is both underpayments as well as overpayments, as we have talked about. And, as it relates to health care, we need to support those providers who are doing the right thing while we are addressing the fraud and abuse. And with the 50-year anniversary of Medicare, this is the time to really celebrate for seniors, providers, and communities what has been happening.

But I think the good news is that we have taken steps, both Congress and the administration, since 2009 to crack down on those

who prey on seniors, and I know our ranking member has been very focused on that. And so I hope that we are going to fully fund and implement the anti-fraud, waste, and abuse provisions in the Affordable Care Act that are there. I mean, we need to keep going. We have seen things happen in Michigan that are outrageous, and so we need to build on those programs, fund the programs that crack down on fraudsters and make sure Medicare remains secure. So I look forward to working with our leadership to do that.

Let me go back to the EITC, the Earned Income Tax Credit, which seems to have gotten a lot of focus here today, and just ask one other thing. Mr. Dodaro, you laid out three ways, without adding more complexity, to address issues around the payment situation. Could you describe how regulating paid tax preparers would help reduce the error rate and what that looks like from your standpoint?

Mr. DODARO. Yes. Well, first of all, IRS already regulates a number of paid tax preparers, so the model already exists in IRS; for example, they regulate CPA firms and tax attorneys. So they already have a model. There are State models like Oregon, and there are basically education requirements, positive certifications, and tests, just like any other profession that has regulatory structures. So that is what we would envision it would look like. Right now IRS does not have the authority, though, to regulate most of the paid tax preparers.

Now, millions of people, over half the population, use paid tax preparers. We have found in a limited study that we did of 19 tax preparers randomly selected, only 2 of the 19 gave us the correct answers; 7 were highly erroneous. We have looked at IRS data. About 60 percent of the returns prepared by tax preparers had errors.

So we think there is a strong case for this type of effort, and the IRS should go through a due process in establishing the regulatory structure for this and have public notice and comment, so that it is a reasonable plan. But we think this is a very prudent approach to help safeguard the individuals who are going to the tax preparers, as well as the government.

Senator STABENOW. Well, thank you. And I do want, in my last remaining moment, to actually give a compliment, a shout-out, to the good news in this report, Mr. Chairman, because I see, with my Agriculture hat on, USDA and the food assistance programs have about a 2.6-percent overpayment—and certainly we would like that to be zero, but they have done a tremendous job in terms of effectively working with the food programs. And because we have done hearings before the committee about Social Security Disability Insurance and we have heard from members at hearings that this is rife with fraud, I do think it is important to recognize that the improper payment rate, including up or down, is 0.4 percent, so less than half of 1 percent is the improper payment rate, Mr. Dodaro, that you have shown, which is consistent with what the Social Security Administration has said.

And so, just for the record, in the interest of giving some good news to folks who are working hard and doing a good job, is it correct that the improper payment rates for our Social Security sys-

tem are actually the lowest of the programs you have looked at for purposes of this report?

Mr. DODARO. I will answer that for the record. I do believe they are low. I do not know if they are the lowest offhand, but I will go back and check and provide an answer for the record.

Senator STABENOW. Terrific.

[The response to the question appears below.]

In its fiscal year 2014 agency financial report, the Social Security Administration (SSA) reported a combined improper payment estimate for the Old Age and Survivors Insurance (OASI) and Disability Insurance (DI) programs. Together, the estimate of improper payments in these programs was \$3 billion, or 0.35 percent of program outlays, for fiscal year 2014.

SSA also reported separate information for these two programs, which is summarized in the table below.

**Summary of Fiscal Year 2014 Reported Improper Payment Estimates for Old Age and Survivors Insurance and Disability Insurance**

Program	Program outlays (dollars in millions)	Improper payment estimate (dollars in millions)	Estimated error rate (percentage of program outlays)
Old Age and Survivors Insurance (OASI)	\$692,700	\$1,782	0.26%
Disability Insurance (DI)	131,500	1,161	0.89%
Combined OASI and DI	824,200	3,000	0.35%

Source: Social Security Administration's fiscal year 2014 agency financial report.

Note: OASDI totals may not equal the sum of OASI and DI amounts because of rounding.

The fiscal year 2014 estimated error rates for OASI and DI—both separately and when combined—are low compared to other programs across the government and lower than the government-wide error rate of 4.5 percent. Nonetheless, because of the size of these programs, the estimated dollar amount of improper payments is significant—over \$1 billion for each program.

Senator STABENOW. Well, the Social Security Disability Insurance program is the one that we have been debating here, and it is very impressive to say half a percent, half of 1 percent.

So, Mr. Chairman, I would suggest that it is not rife with fraud, so that is good news. Thank you.

The CHAIRMAN. What would half of 1 percent be in money, in dollars?

Mr. DODARO. Offhand, I do not know, Senator. I will give an answer for the record. But it would be significant. I mean, some of these programs are so large—

The CHAIRMAN. I do not think we just blow it off, you know.

We are going to go to Senator Scott, but I will ask you this question later. Senator Scott?

Senator SCOTT. Thank you, Mr. Chairman. And certainly, when you think about the comments of Senator Brown, his desire to figure out how to get someone \$500 for a pre-tax, whatever you would call it—what did he say? He wanted a pre-tax refund when you could just increase your exemptions to get more money back during the year as opposed to having to figure out a new system, to create a new program in a place where we are already talking about improper payments that total in a 12-year period of time \$1 trillion. We are talking about how to provide more regulation for tax preparers when we should probably talk about the fact that we are already spending 6 billion hours in preparing our taxes, plus \$168



billion. Perhaps the approach that we should take is to simplify our tax code so that we have fewer folks needing to hire preparers at a price tag of \$168 billion. When you look at the form for the Earned Income Tax Credit, for someone who can least afford a tax preparer, the complexity of the form, and the process itself, does not lend itself to fewer errors. Frankly, simplification of our tax code probably leads in the direction that we would want to go in. And if you have a problem with the amount of money that you are going to get back at the end of the year, and you want to use that money during the year, you just increase your exemptions.

The fact of the matter is, when we are talking about improper payments at \$1 trillion in 12 years, it is amazing to me that we are having a conversation about creating more complexity in a system that needs less complexity. And when you think about what you could do with \$1 trillion, you could literally pay off  $\frac{1}{18}$  of our debt with \$1 trillion. Think about the fact that we have men and women in uniform not using the latest, greatest gadgets that could provide for greater safety. One trillion dollars could provide a lot of resources, a lot of equipment to make sure that our men and women who go to defend this country come home safely. One trillion dollars could truly eliminate our annual deficit. The fact of the matter is, \$1 trillion does so much good in so many ways, and think about the DC Opportunities scholarship right here. We spend about \$6 million. We could fund that for a millennium.

The facts are clear that \$1 trillion of improper payments is a number that is so big that it is hard to digest. And so one of the things that we ought to do—we talk about making the system work better—is perhaps to talk about simplification of the system. But I have not heard that conversation nearly at all.

I also think about the fact that I have a piece of legislation that would provide body cameras for law enforcement officers in the 18,000 jurisdictions looking for, hunting for, \$100 million each and every year so that we can improve the behavior of folks who are on camera when they are being stopped by a law enforcement officer, so that hopefully more of these officers can go home safely.

I think just yesterday in Columbia, SC, an officer lost his life. If more equipment was available because we could afford it—but we are talking about \$1 trillion of improper payments and adding more complexity to that system. It just does not make sense to me.

I would ask you, Mr. Dodaro, if you were to name one reform—one reform with the biggest bang for the buck to reduce that \$1 trillion so that maybe we could provide a better education through the DC Opportunity scholarship, maybe we could provide better equipment for our men and women in uniform, maybe we could provide for more resources for our law enforcement officers who put their lives on the line every day, what would that reform be?

Mr. DODARO. Well—and we have recommended this in our study—I think the reform of the tax system would be a huge improvement on that side. And on the improper payment side, I think that the biggest reform I would like to see is for the Congress to hold the agencies accountable for complying with the law and to reduce the improper payments below 10 percent and to get them as low as possible over a period of time. I think both of those reforms on the tax side and also on the improper payment side could go a

long way to improving the fiscal condition of our national government without detrimentally affecting the programs that serve our people.

Senator SCOTT. Thank you.

The CHAIRMAN. Thank you, Senator Scott.

The Senator from Delaware has one more question——

Senator WYDEN. Mr. Chairman, just very briefly?

Senator CARPER. I am happy to wait.

Senator WYDEN. And I will be very brief. Before my colleague from South Carolina leaves, he should know that both the chairman and I are very, very interested in working with our colleague and Senators from both sides of the aisle on this simplicity question. There is no question that this tax code is an insanely complicated, byzantine mess. Senator Coats and I have had one approach, a 31-line 1040 form. People at *Money* magazine said you could fill out a typical return in something like 45 minutes. But there are a variety of other approaches, so the Senator is spot-on in terms of this.

Senator SCOTT. I thank you, Senator Wyden, for that, and I think the comments of Senator Stabenow went in the same direction. What could we do on job creation or job retention if, in fact, we had the \$1 trillion to apply to our corporate tax rate, take it from 35 percent down to 25 percent? We could stop corporate inversions perhaps overnight.

Thank you.

Senator WYDEN. Senator Coats and I put that in our bill too.

The CHAIRMAN. I thought you made your case very, very well, Senator.

Senator WYDEN. Mr. Chairman, I will be very brief. One point that I just wanted to make is, we have had many Senators present this morning, Mr. Chairman, on both sides of the aisle, and there was not a single Senator present who voiced an objection to our proposal to regulate tax preparers, as the GAO and the Taxpayer Advocate have called for, to deal with problems such as those we have talked about here this morning. So I very much look forward to working with you.

I was also very appreciative of what Mr. Dodaro said with respect to the tax gap. I really feel there is a double standard with respect to enforcement in America. You have the working-class person—the money comes right out of their paycheck. People who can do investments can figure out how to maneuver the tax code around to pay little or nothing in many instances. And that is a big part of the tax gap as well. And each of these matters, working closely with Chairman Hatch and all the members on both sides of the aisle, we can deal with in a bipartisan way. And I thank you, Mr. Chairman. It has been very useful.

The CHAIRMAN. Thank you, Senator.

Senator Carper has one question he would like to ask.

Senator CARPER. Thanks. Mr. Chairman, when I was a Congressman, I used to hold a lot of town hall meetings. I will never forget one town hall meeting that I held where we were talking about revenues and the revenues that were needed to fund our government, to reduce our deficit. And this one lady raised her hand, and I recognized her to speak, and she said, “You know, nobody likes

to pay taxes.” She said, “I do not like to pay taxes. I am not interested in paying more taxes. But this I will tell you for sure”—this was like 30 years ago. She said, “I just do not want you to waste my money. I just do not want you to waste my money.”

And here we have just a treasure trove of ideas before us today. GAO works on them all the time, ways that we can stop wasting people’s money and give us some revenues to pay for things that we actually want to do and need to do.

Mr. Chairman, thank you so much for holding this hearing. And thank you for giving me a chance to say a couple of extra words and ask one question. But I think you noted—or maybe it was the Comptroller who noted it in his testimony—that the administration established a new initiative in 2014 which I think is going to help a lot, and starting this year, the estimated level of improper payments by each agency will have to include the category of root causes. I am a big root cause guy. I think we all are. Do not just look at the symptoms or problems, but look at what are the root problems and causes.

When it comes to some of these problems with improper payments—we will go to the tax gap side here—we are part of the problem. We change the tax code. We make it more complex. We do it late, and we turn it over to the IRS, and after the fact, they do not get the W-2s until too late, and we say, well, we expect you to do a good job. I hear all the time—and I am sure you do too—from our staffs back in our home States, our constituent services staff. They do not get very good service from the IRS, and one of the reasons why is, we do not give them enough money to do their jobs.

Here is my question. Can you just give us a minute in terms of money that we would invest for enforcement in the IRS? Does it pay for itself? Does it more than pay for itself? I would welcome your comments, please.

Mr. DODARO. Yes. What we have said over the years is, the IRS really does not collect enough information to be able to determine which enforcement efforts yield a better, higher rate of return on that investment, and that they need better data to be able to do that. And that is one of the things that we have identified, you know, over time. And so, it is hard to give you an answer.

We know that if you put more money into enforcement, you are going to get more revenue, but exactly what strategies yield the best result is the question. We have illustrated one area where you could shift a small amount of money from less productive exams to more productive areas that get a higher yield, about \$1 billion more in revenue. So we have made a lot of suggestions to the IRS over time to get better return on investment information. So you really need to start there. I mean, it is hard to tell. I wish I could give you a better answer, but the data are not readily available.

Senator CARPER. All right. Mr. Chairman, in our committee and the Homeland Security Committee, which has broad oversight over a lot of the Federal agencies and so forth, very broad, we have had testimony from witnesses who said the payback for every dollar we invest in enforcement is six or seven times that amount. And not only could we get better enforcement, we can also get better service. And we need better enforcement to make sure we are collecting

the money that is owed. When you have a tax gap of—how much?—\$350 billion or something, clearly, we are not doing enough on enforcement, and obviously, we are not doing enough on service.

So I would close with this: thank you so much for this hearing. And, Gene, thank you so much.

The CHAIRMAN. Thank you, Senator.

Mr. Dodaro, you have been really patient. You have answered all the questions and, frankly, you have done a great job.

Back to the EITC, I happen to think that is a very important program. People work, and this is the way we help them. But there is no justification whatsoever for fraud.

Mr. DODARO. Right.

The CHAIRMAN. I am thinking of Senator Brown and his feelings there. He feels very deeply about all these things, as do I. But do you see any justification for fraud even though that program is a very important program for the poor?

Mr. DODARO. Absolutely not. We need to be effective stewards of the taxpayers' money. And as it relates to questions, too, about documentation, for example, we have to have a consistent standard. You know, for income tax purposes, people have to make their documentation available for the IRS. If we can give out taxpayer money, or money we borrow on their behalf, without adequate documentation, that is not right either. So we really need to have consistent standards. There is no excuse for fraud, and we need better techniques in order to identify it, to deal with it, and to prevent it from happening in the first place.

The CHAIRMAN. No matter how good the program may be.

Mr. DODARO. That is exactly right.

The CHAIRMAN. No justification at all.

Mr. DODARO. No. And all these programs have opportunities for improvement, no matter what level of improper payment rate they have.

The CHAIRMAN. Well, I want to thank you for appearing here today, as well as all of our colleagues who have participated in this hearing. It is my hope that we can all work together to find solutions to these gaping holes in our payment system. This committee has done some really yeoman work this year, but we are just starting. I mean, we have so much that we have to do, but we are not sitting back and not doing it.

Now, we owe it to the dedicated taxpayers and citizens of this country to run a good ship, and I intend to see that we get there. And I would ask that any written questions for the record be submitted by Thursday, October 8th.

And let me just say thank you again for being here. Thank you for your candid remarks. Thank you for the presentation that you made and the time that you have spent in preparing for this. It means a lot to me, and if we had more Federal employees like you, I think we would all be better off.

Mr. DODARO. Thank you very much.

The CHAIRMAN. So God bless you and thank you for being here. With that, we are adjourned.

[Whereupon, at 11:53 a.m., the hearing was concluded.]

# APPENDIX

## ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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PREPARED STATEMENT OF HON. GENE L. DODARO, COMPTROLLER GENERAL OF THE  
UNITED STATES, GOVERNMENT ACCOUNTABILITY OFFICE

### GAO HIGHLIGHTS

Highlights of GAO-16-92T, a testimony before the Committee on Finance, U.S. Senate

#### *Why GAO Did This Study*

The Federal Government continues to face an unsustainable long-term fiscal path. Changing this path will require difficult fiscal policy decisions to alter both long-term Federal spending and revenue. In the near term, executive branch agencies and Congress can take action to improve the government's fiscal position by addressing two long-standing issues—improper payments and the tax gap. Over time, these issues involve amounts near or exceeding \$1 trillion.

Over the past decade, GAO has highlighted the issue of improper payments—defined by statute as payments that should not have been made or that were made in an incorrect amount (including overpayments and underpayments). GAO has reported for several years that the Federal Government is unable to determine the full extent to which improper payments occur and reasonably assure that actions are taken to reduce them.

The tax gap is the difference between taxes owed and those paid on time, as a result of taxpayers underreporting their tax liability, underpaying taxes, or not filing tax returns. Reducing the tax gap could provide additional revenue.

This statement discusses (1) actions needed to address improper payments government-wide and (2) strategies to reduce the tax gap. It is based on GAO's recent work on improper payments, agency financial reports and inspectors general reports, and prior reports on the tax gap, including those with open recommendations or matters for congressional consideration that could potentially help reduce the tax gap.

View GAO-16-92T. For more information, contact Beryl H. Davis at (202) 512-2623 or [davisbh@gao.gov](mailto:davisbh@gao.gov); James R. McTigue, Jr. at (202) 512-9110 or [metiguej@gao.gov](mailto:metiguej@gao.gov); or Jessica Lucas-Judy at (202) 512-9110 or [lucasjudyj@gao.gov](mailto:lucasjudyj@gao.gov).

### FISCAL OUTLOOK—ADDRESSING IMPROPER PAYMENTS AND THE TAX GAP WOULD IMPROVE THE GOVERNMENT'S FISCAL POSITION

#### What GAO Found

A number of strategies, including implementing preventive controls and addressing GAO's prior recommendations, can help agencies reduce improper payments, which have been a persistent, government-wide issue. The improper payment estimate, attributable to 124 programs across 22 agencies in fiscal year 2014, was \$124.7 billion, up from \$105.8 billion in fiscal year 2013. The almost \$19 billion increase was primarily due to the Medicare, Medicaid, and Earned Income Tax Credit programs, which account for over 75 percent of the government-wide improper payment estimate. Federal spending in Medicare and Medicaid is expected to significantly increase, so it is critical that actions are taken to reduce improper payments in these programs. Moreover, for fiscal year 2014, Federal entities reported estimated error rates for 10 risk-susceptible programs that exceeded 10 percent. Recent laws and guidance have focused attention on improper payments, but incomplete or understated estimates and noncompliance with criteria listed in Federal law hinder

the government's ability to assess the full extent of improper payments and implement strategies to reduce them. For example, for fiscal year 2014, 2 Federal agencies did not report improper payment estimates for 4 risk-susceptible programs, and 5 programs with improper payment estimates greater than \$1 billion were non-compliant with Federal requirements for 3 consecutive years. Identifying root causes of improper payments can help agencies target corrective actions, and GAO has made numerous recommendations that could help reduce improper payments. For example, strengthening verification of Medicare providers and suppliers could help reduce improper payments. GAO has stated that continued agency attention is needed to (1) identify susceptible programs, (2) develop reliable estimation methodologies, (3) report as required, and (4) implement effective corrective actions based on root cause analysis. Absent such continued efforts, the Federal Government cannot be assured that taxpayer funds are adequately safeguarded.

Addressing the estimated \$385 billion net tax gap will require strategies on multiple fronts. Key factors that contribute to the tax gap include limited third-party reporting, resource trade-offs, and tax code complexity. For example, the extent to which individual taxpayers accurately report their income is correlated to the extent to which the income is reported to them and the Internal Revenue Service (IRS) by third parties. Where there is little or no information reporting, such as with business income, taxpayers tend to significantly misreport their income. GAO has many open recommendations to reduce the tax gap. For example, GAO recommended in 2012 that IRS use return on investment data to reallocate its enforcement resources and potentially increase revenues. Since 2011, GAO also recommended improvements to telephone and online services to help IRS deliver high-quality services to taxpayers who wish to comply with tax laws but do not understand their obligations. Other strategies GAO has suggested would require legislative actions, such as accelerating W-2 filing deadlines. Additionally, requiring partnerships and corporations to electronically file tax returns could help IRS reduce return processing costs and focus its examinations more on noncompliant taxpayers. Further, a broader opportunity to address the tax gap involves simplifying the Internal Revenue Code, as complexity can cause taxpayer confusion and provide opportunities to hide willful noncompliance.

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Chairman Hatch, Ranking Member Wyden, and members of the committee:

Many difficult, major fiscal policy decisions are required to both determine the government's short-term financing and address fundamental structural issues that are currently putting our Nation on a long-term, unsustainable fiscal path. In the near term, however, there are significant ongoing management challenges that if successfully addressed, can contribute to improving the government's fiscal position. They involve reducing billions of dollars in improper payments and tackling a multi-billion-dollar tax gap—the difference between taxes owed and taxes paid on time, as a result of taxpayers underreporting their tax liability, underpaying taxes, or not filing tax returns.

Over time, each of these areas involves amounts near or exceeding \$1 trillion. Last year alone, improper payments government-wide were estimated to be more than \$124 billion, and the latest estimate for the annual net tax gap is \$385 billion. My statement today delineates the nature and scope of these management challenges, as well as the related recommendations we have made over the past several years to improve the government's performance in these areas—both recommendations to the relevant agencies and matters for congressional consideration.

An improper payment is defined by statute as any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements. Among other things, it includes payment to an ineligible recipient, payment for an ineligible good or service, and any duplicate payment.<sup>1</sup> Reducing improper payments is critical to safeguarding Federal funds and could help achieve cost savings and improve the government's fiscal position. However, as we have reported for several years in our annual audit of the *Financial Report of the United States Government*, the Federal Government is unable to determine the full

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<sup>1</sup> An improper payment also includes any payment for a good or service not received (except for such payments where authorized by law) and any payment that does not account for credit for applicable discounts. In addition, the Office of Management and Budget's guidance instructs agencies to report as improper payments any payments for which insufficient or no documentation was found.

extent to which improper payments occur and reasonably assure that appropriate actions are taken to reduce them. Likewise, reducing the tax gap would raise revenue that could be put toward a host of purposes, but there are no easy fixes to this problem. Rather, the tax gap must be attacked on multiple fronts and with multiple strategies over a sustained period. In the face of large and growing structural deficits, it will be especially important to understand the causes of tax noncompliance today and continue to develop new approaches to minimize it.

My testimony today describes (1) actions needed to address government-wide improper payments and (2) strategies to reduce the tax gap. My comments are primarily based on our recent work on improper payments and analysis of agency financial reports and inspectors general (OIG) reports, as well as our prior reports on the tax gap and several other reports with open recommendations or matters for congressional consideration that could help reduce the tax gap.<sup>2</sup> The products cited throughout this statement include detailed explanations of the methods used to conduct our work. We conducted the work on which this statement is based in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions.

#### ACTIONS NEEDED TO ADDRESS IMPROPER PAYMENTS

Improper payments have consistently been a government-wide issue despite efforts to reduce them and identify root causes, including fraud.<sup>3</sup> Incomplete, unreliable, or understated estimates; risk assessments that may not accurately assess the risk of improper payment; and noncompliance with criteria listed in Federal law hinder the government's ability to understand the scope of the issue. We have reported on a number of strategies, including implementing preventive and detective controls and addressing open recommendations, that can help agencies reduce improper payments.

#### IMPROPER PAYMENTS REMAIN A SIGNIFICANT, PERVASIVE GOVERNMENT-WIDE ISSUE

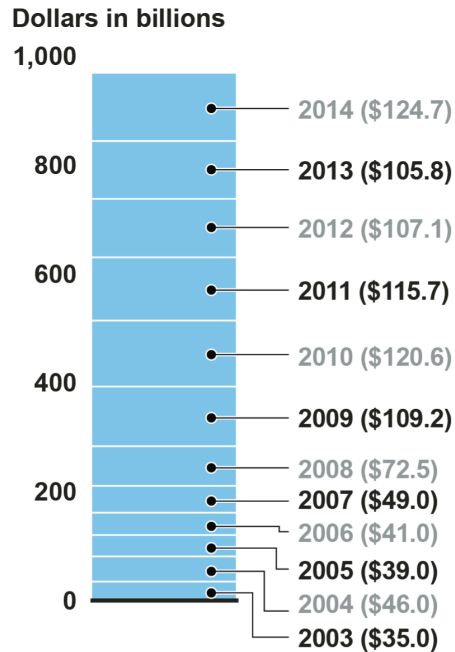
Improper payments remain a significant and pervasive government-wide issue. Since fiscal year 2003—when certain agencies began reporting improper payments as required by the Improper Payments Information Act of 2002 (IPIA)—cumulative improper payment estimates have totaled almost \$1 trillion, as shown in figure 1.<sup>4</sup>

<sup>2</sup>See Related GAO Products at the end of this statement.

<sup>3</sup>It is important to note that while all fraud involving a Federal payment is considered an improper payment, not all improper payments are fraud. Improper payment estimates are not intended to measure fraud in a particular program.

<sup>4</sup>IPIA—as amended by the Improper Payments Elimination and Recovery Act of 2010 (IPERA) and the Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA)—requires executive branch agencies to (1) review all programs and activities, (2) identify those that may be susceptible to significant improper payments, (3) estimate the annual amount of improper payments for those programs and activities, (4) implement actions to reduce improper payments and set reduction targets, and (5) report on the results of addressing the foregoing requirements. IPIA, Pub. L. No. 107–300, 116 Stat. 2350 (Nov. 26, 2002), *as amended* by IPERA, Pub. L. No. 111–204, 124 Stat. 2224 (July 22, 2010), *and* IPERIA, Pub. L. No. 112–248, 126 Stat. 2390 (Jan. 10, 2013), *and codified as amended* at 31 U.S.C. § 3321 note. For fiscal year 2014 and beyond, IPIA, as amended, defines “significant improper payments” as gross annual improper payments in a program exceeding (1) both 1.5 percent of program outlays and \$10 million of all program or activity payments during the fiscal year reported or (2) \$100 million (regardless of the improper payment error rate).

**Figure 1: Cumulative Improper Payment Estimates for Fiscal Years 2003 through 2014**



Source: GAO. | GAO-16-92T

Note: Generally, the specific programs and total number of programs that constitute the government-wide improper payment estimate vary from year to year. In earlier years, the number of programs included in the government-wide estimate generally increased as programs reported improper payment estimates for the first time.

In fiscal year 2014, agencies reported improper payment estimates totaling \$124.7 billion, a significant increase—almost \$19 billion—from the prior year's estimate of \$105.8 billion. For fiscal year 2014, overpayments accounted for approximately 90 percent of the improper payment estimate, according to *www.paymentaccuracy.gov*, with underpayments accounting for the remaining 10 percent.<sup>5</sup> The estimated improper payments for fiscal year 2014 were attributable to 124 programs spread among 22 agencies. Agencies reported improper payment estimates exceeding \$1 billion for each of 12 different programs, which cumulatively accounted for \$115.6 billion, or approximately 93 percent of the fiscal year 2014 government-wide estimate (see app. I).

The estimated government-wide error rate increased from fiscal year 2013 to fiscal year 2014 (from 4.0 percent of program outlays to 4.5 percent).<sup>6</sup> Programs with the highest reported error rates for fiscal year 2014 included the Earned Income Tax

<sup>5</sup> The Office of Management and Budget (OMB) established <https://paymentaccuracy.gov/> to enhance transparency and accountability of improper payments. The website includes information regarding government-wide improper payments as well as more detailed information—such as reduction targets and accountable officials—for high-error programs. OMB guidance directs agencies to classify payments with insufficient supporting documentation as overpayments.

<sup>6</sup> This estimate excludes the Department of Defense's Defense Finance and Accounting Service (DFAS) Commercial Pay program. When including the DFAS Commercial Pay program, the estimated government-wide improper payment error rate was 4.0 percent of program outlays in fiscal year 2014, an increase from 3.5 percent in fiscal year 2013. Because of long-standing financial management weaknesses, discussed later in this statement, the fiscal year 2014 improper payment estimate for the DFAS Commercial Pay program may not be reliable.

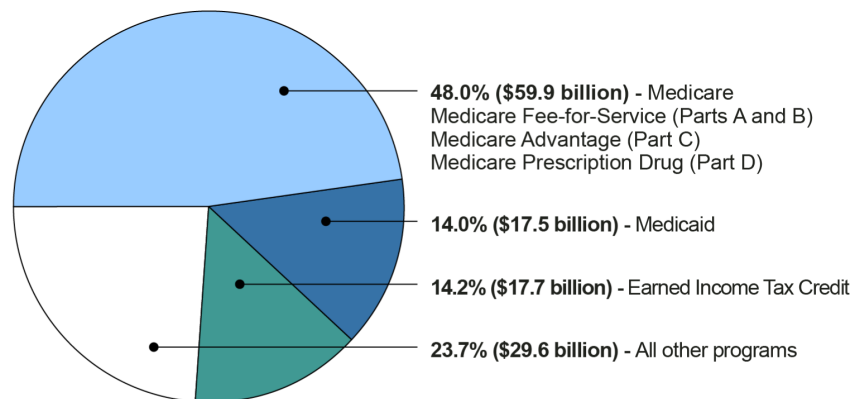


Credit (27.2 percent), School Breakfast (25.6 percent), and Farm Security and Rural Investment Act Programs (23.1 percent).<sup>7</sup>

ADDITIONAL EFFORTS ARE NEEDED TO REDUCE MEDICARE, MEDICAID, AND EARNED INCOME TAX CREDIT IMPROPER PAYMENTS

Improper payment estimates for the Medicare, Medicaid, and Earned Income Tax Credit (EITC) programs accounted for more than 75 percent of the fiscal year 2014 improper payment estimate, as shown in figure 2.

**Figure 2: Government-Wide Improper Payment Estimates by Program for Fiscal Year 2014**



Source: GAO analysis of agencies' data. | GAO-16-92T

The increase in the 2014 government-wide improper payment estimate is attributed primarily to increases in estimated error rates in three major programs: Medicare Fee-for-Service, Medicaid, and EITC. Based on HHS's fiscal year 2014 agency financial report, Federal spending in Medicare and Medicaid is expected to significantly increase—on average, by 8.6 percent per year over the next 3 years. Consequently, it is critical that actions are taken to reduce improper payments in these programs. Over the past several years, we made numerous recommendations that if effectively implemented, could improve program management, help reduce improper payments in these programs, and help improve the government's fiscal position.

#### Medicare

In fiscal year 2014, Medicare financed health services for approximately 54 million elderly and disabled beneficiaries at a cost of \$603 billion and reported an estimated \$60 billion in improper payments.<sup>8</sup> Medicare spending generally has grown faster than the economy, and in the coming years, continued growth in the number of Medicare beneficiaries and in program spending will create increased challenges for the Federal Government. The Centers for Medicare and Medicaid Services (CMS), which administers Medicare, has demonstrated a strong commitment to reducing improper payments, particularly through its dedicated Center for Program Integrity. For example, CMS centralized the development and implementation of automated edits for national coverage policies—prepayment controls used to deny Medicare claims that should not be paid—to help ensure greater consistency in pay-

<sup>7</sup> For fiscal year 2014, Federal entities reported improper payment error rates for 10 risk-susceptible programs that exceeded 10 percent, collectively accounting for more than 50 percent of the government-wide improper payment estimate. These 10 programs are listed in app. II. In addition, some agencies report high error rates for components of programs. For example, the Department of Health and Human Services reported error rates for certain components of its Medicare Fee-for-Service program—such as durable medical equipment and home health claims—that exceeded 50 percent for fiscal year 2014.

<sup>8</sup> Medicare payments are made primarily to providers and suppliers.

ing only those claims that align with national policies. In response to our recommendations, CMS has also taken steps to reduce differences among postpayment review contractor requirements when possible and has improved automated edits that assess all services provided to the same beneficiary by the same provider on the same day, so providers cannot avoid claim denials by billing for services on multiple claim lines or multiple claims. Additionally, in March 2014, CMS awarded a contract to a Federal Bureau of Investigation-approved contractor that will enable the agency to conduct fingerprint-based criminal history checks of high-risk providers and suppliers.

Nevertheless, in our February 2015 update to our high-risk series, we reported that while CMS has demonstrated efforts to reduce improper payments in the Medicare program, estimated improper payment rates have remained unacceptably high.<sup>9</sup> For fiscal year 2014, the Department of Health and Human Services (HHS) reported an estimated error rate of 12.7 percent for Medicare Fee-for-Service. Some components of this estimate—such as durable medical equipment and home health claims—have estimated error rates in excess of 50 percent, meaning that most payments for these items and services were estimated to be improper. Fully exercising its authority related to strengthening its provider and supplier enrollment provisions and addressing our other open recommendations related to prepayment and postpayment claims review activities would help CMS achieve reductions in Medicare improper payments. The following are examples of actions that could help reduce Medicare improper payments.

- **Improving use of automated edits.** To help ensure that payments are made properly, CMS uses controls called edits that are programmed into claims processing systems to compare claims data with Medicare requirements in order to approve or deny claims or flag them for further review. In November 2012, we reported that use of prepayment edits saved Medicare at least \$1.76 billion in fiscal year 2010, but savings could have been greater if prepayment edits had been more widely used.<sup>10</sup> To promote greater use of effective prepayment edits and better ensure that payments are made properly, we recommended that CMS (1) improve the data collected about local prepayment edits to enable CMS to identify the most effective edits and the local coverage policies on which they are based and (2) require Medicare administrative contractors to share information about the underlying policies and savings related to their most effective edits. CMS concurred with both recommendations and has begun to take steps to implement them.
- **Monitoring postpayment claims reviews.** CMS uses four types of contractors to conduct postpayment claims reviews to identify improper payments. In July 2013, we found that although postpayment claims reviews involved the same general process regardless of which type of contractor conducted them, CMS had different requirements for many aspects of the process across the four contractor types.<sup>11</sup> Some of these differences might impede efficiency and effectiveness of claims reviews by increasing administrative burden for providers. Furthermore, in July 2014, we reported that CMS did not have reliable data or provide sufficient oversight and guidance to measure and fully prevent inappropriate duplication of reviews.<sup>12</sup> We recommended that CMS monitor the database used to track recovery audit activities to ensure that all data were submitted, accurate, and complete. CMS concurred with the recommendation and said it would seek contract modifications to add quality assurance performance metrics related to the completeness and timeliness of data.
- **Removing Social Security numbers from Medicare cards.** The identification number on Medicare beneficiaries' cards includes as one component the Social Security number of the beneficiary (or other eligible person's, such as a spouse). This introduces risks that beneficiaries' personal information could be

<sup>9</sup> GAO, *High-Risk Series: An Update*, GAO-15-290 (Washington, DC: Feb. 11, 2015).

<sup>10</sup> GAO, *Medicare Program Integrity: Greater Prepayment Control Efforts Could Increase Savings and Better Ensure Proper Payment*, GAO-13-102 (Washington, DC: Nov. 13, 2012).

<sup>11</sup> GAO, *Medicare Program Integrity: Increasing Consistency of Contractor Requirements May Improve Administrative Efficiency*, GAO-13-522 (Washington, DC: July 23, 2013). For example, contractors developing the improper payment estimate for Medicare Fee-for-Service must give a provider 75 days to respond to a request for documentation, whereas a contractor investigating potential fraud is only required to give the provider 30 days.

<sup>12</sup> GAO, *Medicare Program Integrity: Increased Oversight and Guidance Could Improve Effectiveness and Efficiency of Postpayment Claims Reviews*, GAO-14-474 (Washington, DC: July 18, 2014).

obtained and used to commit identity theft.<sup>13</sup> In September 2013, we reported that CMS had not taken steps to select and implement a technical solution for removing Social Security numbers from Medicare cards.<sup>14</sup> To better position the agency to efficiently and cost-effectively identify, design, develop, and implement a solution to address this issue, we recommended that CMS direct the initiation of an information technology project for identifying, developing, and implementing changes that would have to be made to CMS's affected systems.

Consistent with our recommendation, when the Medicare Access and CHIP Reauthorization Act of 2015 was enacted into law in April 2015, it included a provision requiring and providing funding for the Secretary of Health and Human Services, in consultation with the Commissioner of Social Security, to establish cost-effective procedures to ensure that a Social Security account number (or derivative thereof) is not displayed, coded, or embedded on Medicare beneficiary cards and that any identifier displayed on such cards is not identifiable as a Social Security account number (or derivative thereof).<sup>15</sup> As of July 2015, CMS had started the Social Security Number Removal Initiative in response to the law and was in the process of establishing a program management organization to continue the planning and execution of the initiative.

- **Implementing actions authorized by the Patient Protection and Affordable Care Act (PPACA).**<sup>16</sup> In addition to provisions to expand health insurance coverage, PPACA provides CMS with certain authorities to combat fraud, waste, and abuse in Medicare. We reported in our February 2015 update to our high-risk series that CMS should fully exercise its PPACA authority related to strengthening its provider and supplier enrollment provisions.<sup>17</sup> For example, CMS should require surety bonds—a three-party agreement in which a company, known as a surety, agrees to compensate the bondholder if the bond purchaser fails to keep a specified promise—for certain at-risk providers and suppliers.
- **Strengthening verification of providers and suppliers.** As we reported in June 2015, we estimated that about 22 percent of Medicare providers' and suppliers' practice location addresses were potentially ineligible.<sup>18</sup> For example, we identified 46 instances out of a generalizable sample of 496 addresses in which practice location addresses were inside a mailing store similar to a UPS Store. We also identified other locations that were potentially ineligible, including vacant addresses and unrelated establishments. In addition, we found 147 out of about 1.3 million physicians listed as eligible to bill Medicare who, as of March 2013, had received a final adverse action from a State medical board for crimes against persons, financial crimes, and other types of felonies but were either not revoked from the Medicare program until months after the adverse action or never removed. We recommended that CMS modify the software integrated into the provider enrollment database to include specific flags to help identify potentially questionable practice location addresses, revise guidance for verifying practice locations, and collect additional license information. CMS agreed with our recommendations to modify its software and collect license information but did not agree to revise its guidance for verifying practice location addresses.

### Medicaid

In fiscal year 2014, the Federal share of estimated Medicaid outlays was \$304 billion, and HHS reported approximately \$17.5 billion in estimated Medicaid improper payments. The size and diversity of the Medicaid program make it particularly vulnerable to improper payments, including payments made for people not eligible for Medicaid or for services not actually provided. CMS has an important role in overseeing and supporting State efforts to reduce and recover improper payments and

<sup>13</sup> GAO, *Medicare: CMS Needs an Approach and a Reliable Cost Estimate for Removing Social Security Numbers from Medicare Cards*, GAO-12-831 (Washington, DC: Aug. 1, 2012).

<sup>14</sup> GAO, *Medicare Information Technology: Centers for Medicare and Medicaid Services Needs to Pursue a Solution for Removing Social Security Numbers from Cards*, GAO-13-761 (Washington, DC: Sept. 10, 2013).

<sup>15</sup> Pub. L. No. 114-10, § 501, 129 Stat. 87, 163 (Apr. 16, 2015).

<sup>16</sup> Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010). In this statement, references to PPACA include amendments made by the Health Care and Education Reconciliation Act of 2010.

<sup>17</sup> GAO-15-290.

<sup>18</sup> GAO, *Medicare Program: Additional Actions Needed to Improve Eligibility Verification of Providers and Suppliers*, GAO-15-448 (Washington, DC: June 25, 2015).

has demonstrated some leadership commitment in this area.<sup>19</sup> For example, CMS issued guidance to improve corrective actions taken by States. CMS also established the Medicaid Integrity Institute, which provides training and technical assistance to States on approaches to prevent improper payments and guidance on program integrity issues.

In our February 2015 high-risk update, we reported that while CMS had taken these positive steps in recent years, in several areas, CMS had still to address issues and recommendations that had not been fully implemented.<sup>20</sup> These issues include implementing effective program integrity processes for managed care, ensuring clear reporting of overpayment recoveries, and refocusing program integrity efforts on approaches that are cost-effective. The following are actions that we recommended CMS take to help reduce Medicaid improper payments and improve program integrity.

- **Improving third-party liability efforts.** Congress generally established Medicaid as the health care payer of last resort, meaning that if enrollees have another source of health care coverage—such as private insurance—that source should pay, to the extent of its liability, before Medicaid does. This is referred to as third-party liability. However, there are known challenges to ensuring that Medicaid is the payer of last resort. For example, States have reported challenges obtaining out-of-state coverage data from private insurers. Without such data, it is difficult for States to reliably identify or recover payments from liable private insurers not licensed in the State. While CMS has issued guidance to States, in January 2015 we recommended additional actions that could help to improve cost-saving efforts in this area, such as (1) monitoring and sharing information on third-party liability efforts and challenges across all States and (2) providing guidance to States on oversight of third-party liability efforts related to Medicaid managed care plans.<sup>21</sup> HHS agreed with our recommendations and in May 2015 reported that CMS has begun developing a work plan to implement the recommendations.
- **Increasing oversight of managed care.** Most Medicaid beneficiaries receive services through a managed care system, and Medicaid managed care expenditures have been growing at a faster rate than fee-for-service expenditures.<sup>22</sup> In May 2014, we reported that most State and Federal program integrity officials we interviewed told us that they did not closely examine managed care payments, focusing on fee-for-service claims instead.<sup>23</sup> HHS agreed with our recommendation to update Medicaid managed care guidance on program integrity practices and effective handling of managed care organization recoveries. On June 1, 2015, the agency issued a proposed rule to revise program integrity policies, including policy measures that we have recommended.<sup>24</sup> Among other measures, the rule, if finalized, would require States to conduct audits of managed care organizations' service utilization and financial data every 3 years and standardize the treatment of recovered overpayments by plans.
- **Strengthening program integrity.** In November 2012, we reported that CMS could do more to eliminate duplication and improve efficiency of its Medicaid integrity efforts.<sup>25</sup> Since then, CMS has taken positive steps to oversee program integrity efforts in Medicaid, including reconfiguring its approach in 2013 to reduce duplicate reviewing and auditing of States' claims and improve efficiencies in its audits, redesigning its comprehensive reviews of States' program integrity activities toward a more targeted risk assessment approach, and increasing its efforts to hold States accountable for reliably reporting program integrity recoveries. However, CMS has not strengthened its efforts to calculate return on in-

<sup>19</sup> Medicaid is designed as a Federal-State partnership. The program is financed jointly by the Federal Government and States, administered at the State level, and overseen at the Federal level by CMS.

<sup>20</sup> GAO-15-290.

<sup>21</sup> GAO, *Medicaid: Additional Federal Action Needed to Further Improve Third-Party Liability Efforts*, GAO-15-208 (Washington, DC: Jan. 28, 2015).

<sup>22</sup> Under a Medicaid managed care system, States contract with managed care organizations to provide or arrange for medical services and prospectively pay the organizations a per person, or capitated, payment. Under a fee-for-service system, health care providers claim reimbursement from State Medicaid programs for services rendered to Medicaid beneficiaries.

<sup>23</sup> GAO, *Medicaid Program Integrity: Increased Oversight Needed to Ensure Integrity of Growing Managed Care Expenditures*, GAO-14-341 (Washington, DC: May 19, 2014).

<sup>24</sup> 80 Fed. Reg. 31098 (June 1, 2015).

<sup>25</sup> GAO, *Medicaid Integrity Program: CMS Should Take Steps to Eliminate Duplication and Improve Efficiency*, GAO-13-50 (Washington, DC: Nov. 13, 2012).

vestment (ROI) for its program integrity efforts, as we recommended in November 2012. In January 2015, CMS officials confirmed that the agency is developing a methodology for measuring and calculating a single ROI that reflects the Center for Program Integrity's initiatives for both Medicare and Medicaid, and they expect to have their methodology finalized later this year. We will assess the finalized ROI methodology when it is available.

#### *Earned Income Tax Credit*

In fiscal year 2014, the Internal Revenue Service (IRS) reported program payments of \$65.2 billion for EITC.<sup>26</sup> IRS estimated that 27.2 percent, or \$17.7 billion, of these program payments were improper.<sup>27</sup> The estimated improper payment rate for EITC has remained relatively unchanged since fiscal year 2003 (the first year IRS had to report estimates of these payments to Congress), but the amount of improper EITC payments increased from an estimated \$10.5 billion in fiscal year 2003 to nearly \$18 billion in fiscal year 2014 because of growth in the EITC program overall.

The persistent problems with improper EITC payments—which we have highlighted for years—are one reason we continue to designate IRS enforcement of tax laws as a high-risk area.<sup>28</sup> As we have reported, a root cause of EITC noncompliance is that eligibility is determined by taxpayers themselves or their tax return preparers and that IRS's ability to verify eligibility before issuing refunds is limited.

The Department of the Treasury (Treasury) divides EITC improper payments into two categories: authentication and verification.<sup>29</sup> Authentication errors include errors associated with IRS's inability to validate qualifying child requirements, taxpayers' filing status, and EITC claims associated with complex or nontraditional living situations. Verification errors relate to IRS's inability to identify individuals improperly reporting income to claim EITC amounts to which they are not entitled. Verification errors include underreporting and overreporting of income by wage earners as well as taxpayers who report that they are self-employed. Although the EITC program has been modified a number of times since its enactment in 1975 to reduce complexity and help improve the program's administration, complexity has remained a key factor contributing to improper payments in the program.

IRS has undertaken a number of compliance and enforcement activities to reduce EITC improper payments, and Treasury reported in its fiscal year 2014 agency financial report that it protected an estimated \$3.5 billion in Federal revenue in fiscal year 2014.<sup>30</sup> Among other things, IRS uses audits to help identify EITC improper payments, and in June 2014, we reported that about 45 percent of correspondence audits (audits done by mail) that closed in fiscal year 2013 focused on EITC issues.<sup>31</sup> IRS has reported that tax returns with EITC claims were twice as likely to be audited as other tax returns. However, we found that the effectiveness of these audits may be limited because since 2011 there have been regular backlogs in the audits, which have resulted in delays in responding to taxpayer responses and inquiries. We also found that unclear correspondence generated additional work for

<sup>26</sup> Congress established EITC in 1975. It is used to (1) offset the impact of Social Security taxes on low-income families and (2) encourage low-income families to seek employment rather than public assistance. Taxpayers who are eligible individuals may take a refundable credit for a portion of their earned income. Generally, credit amounts depend on the number of qualifying children who meet age, relationship, and residency tests. The credit gradually increases with income (the phase-in range), plateaus at a maximum amount (the plateau range), and then gradually decreases until it reaches zero (the phaseout range). For EITC, program payments include tax expenditures (a tax credit that offsets income taxes) and outlays (a refund if the credit exceeds the amount of taxes owed).

<sup>27</sup> EITC overpayments are the difference between the EITC amount claimed by the taxpayer on his or her return and the amount the taxpayer should have claimed (both tax expenditures and outlays, if applicable). EITC underpayments are defined as the amount of EITC disallowed by IRS in processing that should have been allowed.

<sup>28</sup> GAO-15-290. See also GAO, *Government Efficiency and Effectiveness: Opportunities to Reduce Fragmentation, Overlap, Duplication, and Improper Payments and Achieve Other Financial Benefits*, GAO-15-440T (Washington, DC: Mar. 4, 2015); *High-Risk Series: An Update*, GAO-05-207 (Washington, DC: Jan. 2005); and *Financial Management: Billions in Improper Payments Continue to Require Attention*, GAO-01-44 (Washington, DC: Oct. 27, 2000).

<sup>29</sup> Treasury Inspector General for Tax Administration, *Existing Compliance Processes Will Not Reduce the Billions of Dollars in Improper Earned Income Tax Credit and Additional Child Tax Credit Payments*, Reference Number 2014-40-093 (Washington, DC: Sept. 29, 2014).

<sup>30</sup> Protected revenue refers to the total value of erroneous payments prevented or recovered through compliance activities.

<sup>31</sup> GAO, *IRS Correspondence Audits: Better Management Could Improve Tax Compliance and Reduce Taxpayer Burden*, GAO-14-479 (Washington, DC: June 5, 2014).

IRS, such as telephone calls to IRS examiners. These issues have imposed burdens on taxpayers and costs for IRS. IRS acknowledged these concerns and has initiated several programs to address EITC improper payments, such as increasing outreach and education to taxpayers and tax return preparers.

Legislative action and significant changes in IRS compliance processes likely would be necessary to make any meaningful reduction in improper payments. We have previously recommended matters for congressional consideration or executive actions that if effectively implemented, could help reduce EITC improper payments as well as the tax gap, as discussed later in this statement.

RECENT LEGISLATION AND GUIDANCE HAVE FOCUSED ATTENTION ON ESTIMATING AND REDUCING IMPROPER PAYMENTS AND IDENTIFYING ROOT CAUSES, INCLUDING FRAUD

#### *Recent Legislation and Guidance Related to Improper Payments*

The Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA) is the latest in a series of laws Congress has passed to address improper payments.<sup>32</sup> IPERIA directs the Office of Management and Budget (OMB) to annually identify a list of high-priority programs for greater levels of oversight and review, including establishing annual targets and semiannual or quarterly actions for reducing improper payments. Previously, the Improper Payments Elimination and Recovery Act of 2010 (IPERA) established a requirement for agency OIGs to report annually on agencies' compliance with specific criteria contained in IPERA, including publishing estimates and corrective action plans for programs deemed to be susceptible to significant improper payments and reporting gross improper payment rates of less than 10 percent.<sup>33</sup>

IPERIA also enacted into law a Do Not Pay initiative, which is a web-based, centralized data-matching service that allows agencies to review multiple databases to help determine a recipient's award or payment eligibility prior to making payments. Similarly, the Digital Accountability and Transparency Act of 2014 (DATA Act) calls on Treasury to establish a data analysis center, or to expand an existing service, to provide data, analytic tools, and data management techniques for preventing or reducing improper payments.<sup>34</sup> As we have previously stated, effective implementation of the DATA Act and the use of data analytic tools could help agencies to prevent, detect, and reduce improper payments.<sup>35</sup>

In addition to these legislative initiatives, OMB has continued to play a key role in the oversight of government-wide improper payments. OMB has established guidance for Federal agencies on reporting, reducing, and recovering improper payments as required by IPIA, as amended, and on protecting privacy while reducing improper payments with the Do Not Pay initiative.<sup>36</sup>

<sup>32</sup> Pub. L. No. 112-248, 126 Stat. 2390 (Jan. 10, 2013).

<sup>33</sup> IPERA contains six criteria for compliance. The six criteria are that the entity has (1) published an annual financial statement and accompanying materials in the form and content required by OMB for the most recent fiscal year and posted that report on the entity website; (2) conducted a risk assessment for each specific program or activity that conforms with IPIA, as amended; (3) published estimates of improper payments for all programs and activities identified as susceptible to significant improper payments under the entity's risk assessment; (4) published corrective action plans for programs and activities assessed to be at risk for significant improper payments; (5) published and met annual improper payment reduction targets for all programs and activities assessed to be at risk for significant improper payments; and (6) reported a gross improper payment rate of less than 10 percent for each program and activity for which an improper payment estimate was obtained and published. Fiscal year 2014 was the 4th year for which OIGs were required to issue annual reports on agencies' compliance with the six criteria listed in IPERA. Under OMB implementing guidance, the reports should be completed within 180 days of the publication of the Federal agencies' annual performance and accountability reports or agency financial reports.

<sup>34</sup> Pub. L. No. 113-101, 128 Stat. 1146 (May 9, 2014), *codified* at 31 U.S.C. § 6101 note. The DATA Act amended the Federal Funding Accountability and Transparency Act of 2006.

<sup>35</sup> For more information on the DATA Act, see GAO, *Federal Spending Accountability: Preserving Capabilities of Recovery Operations Center Could Help Sustain Oversight of Federal Expenditures*, GAO-15-814 (Washington, DC: Sept. 14, 2015), and *DATA Act: Progress Made in Initial Implementation but Challenges Must be Addressed as Efforts Proceed*, GAO-15-752T (Washington, DC: July 29, 2015).

<sup>36</sup> Office of Management and Budget, *Appendix C to Circular No. A-123, Requirements for Effective Estimation and Remediation of Improper Payments*, OMB Memorandum M-15-02 (Washington, DC: Oct. 20, 2014); Revised, *Financial Reporting Requirements*, OMB Circular No. A-136 (Washington, DC: Sept. 18, 2014); and *Protecting Privacy while Reducing Improper Payments with the Do Not Pay Initiative*, OMB Memorandum M-13-20 (Washington, DC: Aug. 16, 2013).

### *Root Causes of Improper Payments*

According to OMB's guidance in effect for fiscal year 2014, agencies were required to classify the root causes of estimated improper payments into three general categories for reporting purposes. As we previously reported, detailed analysis of the root causes of improper payments can help agencies to identify and implement targeted corrective actions.<sup>37</sup> The categories are (1) administrative and documentation errors, including errors caused by absence of supporting documentation necessary to verify the accuracy of a payment or by incorrect processing of payments by an agency; (2) authentication and medical necessity errors, including those caused by inability to authenticate eligibility criteria or providing a service that was not medically necessary; and (3) verification errors, including those caused by failure or inability to verify recipient information, such as income or work status, or beneficiaries failing to report correct information to an agency. Examples of root causes of improper payments that agencies identified for fiscal year 2014 include the following:

- **Administrative and documentation errors.** The Small Business Administration identified loan processing and disbursement staff that did not consistently follow guidance in standard operating procedures and policy memos for determining loan eligibility as a root cause of improper payments in its Disaster Loan program.
- **Authentication and medical necessity errors.** HHS reported a root cause of Medicare Fee-for-Service improper payments as inpatient hospital claims for short stays that were determined not to be medically necessary in an inpatient setting and should have been billed as outpatient.
- **Verification errors.** For EITC, Treasury identified misreporting of income by wage earners as one of the root causes of improper payments. Likewise, the Social Security Administration reported that unreported financial accounts and wages were a source of Supplemental Security Income improper payments.

The three categories for reporting root causes of errors were very general, and in July 2014 we reported that a more detailed analysis could help agencies to identify and implement more effective preventive and detective controls and corrective actions in the various programs.<sup>38</sup> OMB's guidance in effect for fiscal year 2015 directs agencies to report on the causes of improper payments using more detailed categories than those previously required, such as program design issues or administrative errors at the Federal, State, or local agency level. OMB requested that the four agencies with the largest high-priority programs implement the revised guidance early—by April 30, 2015—using fiscal year 2014 information.<sup>39</sup> This included developing comprehensive corrective action plans for each program that describe root causes and establish critical path milestones to meet improper payment reductions; identifying improper payments using the new, more detailed categories outlined in the guidance; and developing plans to provide reasonable assurance that internal controls over improper payments are in place and are working effectively. Each of the four agencies submitted a letter to OMB describing its efforts to implement the guidance early. While the revised guidance—and efforts to implement it early—may help agencies to reduce improper payments, it is too soon to determine its impact.

### *Fraud*

Fraud is one specific type of improper payment and is particularly difficult to identify and estimate. Fraud involves obtaining something of value through willful misrepresentation.<sup>40</sup> Whether an act is fraudulent is determined through the judicial or other adjudicative system. According to OMB guidance, agencies should refer matters involving possible fraudulent activities to the appropriate parties, such as the relevant Office of the Inspector General (OIG) or the Department of Justice (DOJ).

There are known cases in which improper payments are directly attributable to fraud. Further, a lack of sufficient supporting documentation may mask the true

<sup>37</sup> GAO, *Improper Payments: Government-Wide Estimates and Reduction Strategies*, GAO-14-737T (Washington, DC: July 9, 2014).

<sup>38</sup> GAO-14-737T.

<sup>39</sup> The four agencies were the Departments of Health and Human Services, Labor, and the Treasury and the Social Security Administration.

<sup>40</sup> GAO, *Government Auditing Standards: 2011 Revision*, GAO-12-331G (Washington, DC: Dec. 2011).

causes of improper payments—including fraud. When payments lack the appropriate supporting documentation, their validity cannot be determined. It is possible that these payments were for valid purposes, but it is also possible that the lack of documentation could conceal fraudulent activities. For fiscal year 2014, HHS cited documentation errors as a major contributor to improper payments in certain components of its Medicare Fee-for-Service program, such as durable medical equipment and home health claims.<sup>41</sup>

We have found these areas to be vulnerable to fraud in our past work, and recent cases continue to raise concern in these areas.<sup>42</sup> For example, in June 2015, DOJ announced charges against 243 individuals for approximately \$712 million in false Medicare billing related to various health care fraud-related crimes nationwide. According to DOJ, the individuals charged included 46 doctors, nurses, and other licensed medical professionals, and in many cases, the alleged fraud included various medical treatments and services—such as home health care, psychotherapy, physical and occupational therapy, durable medical equipment, and prescription drug treatments—that were medically unnecessary or never performed. Likewise, in 2012, 7 individuals were arrested and indicted on charges related to their alleged participation in a scheme that involved fraudulent claims of nearly \$375 million for home health services that were either not provided or not medically necessary.

For fiscal year 2014, HHS and DOJ reported that the Federal Government won or negotiated over \$2.3 billion in health care fraud judgments and settlements through the Health Care Fraud and Abuse Control (HCFAC) program.<sup>43</sup> In fiscal year 2014, DOJ opened 924 new criminal health care fraud investigations, and HHS OIG investigations resulted in 867 criminal actions and 529 civil actions.<sup>44</sup> Table 1 lists other examples of fraud in various programs.

**Table 1: Recent Examples of Reported Fraud in Government Programs**

Program	Description of reported fraud
Medicare	Two people were recently sentenced to prison for providing unnecessary psychiatric services, falsifying records for psychotherapy treatment that had not been provided, and intercepting patient billing statements to prevent them from identifying treatments that were not provided.
Medicaid	A recent Medicaid fraud scheme involved a business that provided personal aide care to the elderly and disabled. The business owners falsified documentation to support face-to-face visits with patients that never occurred.
Unemployment Insurance	A woman was convicted of submitting falsified claims that listed individuals and businesses for which she was not employed—including one claim for when she was incarcerated. She also submitted a claim for benefits using the identity of another individual.  A man was sentenced to 6 years in prison for creating several fictitious companies and using names and Social Security numbers of unsuspecting individuals registered as employees of these fictitious companies to obtain fraudulent unemployment benefits.
Earned Income Tax Credit	A man was sentenced to prison for selling to clients the names and Social Security numbers of individuals used to improperly claim dependents and related tax credits, such as the Earned Income Tax Credit.

Source: GAO summary of Department of Justice press releases. | GAO-16-92T

<sup>41</sup>When estimating Medicare Fee-for-Service improper payments, HHS contractors request documentation from providers multiple times before determining that payments lack sufficient supporting documentation.

<sup>42</sup>GAO, *Health Care Fraud: Types of Providers Involved in Medicare, Medicaid, and the Children's Health Insurance Program Cases*, GAO-12-820 (Washington, DC: Sept. 7, 2012).

<sup>43</sup>The Health Insurance Portability and Accountability Act of 1996 (HIPAA) established the HCFAC program to help combat fraud and abuse in health care programs, such as Medicare and Medicaid. HCFAC program goals include coordinating Federal, State, and local law enforcement efforts to control fraud and abuse associated with health plans; conducting investigations and audits related to health care; and facilitating the enforcement of civil, criminal, and administrative statutes applicable to health care. HHS and DOJ jointly administer the program, and HIPAA requires them to issue a joint report annually to Congress.

<sup>44</sup>Department of Health and Human Services and Department of Justice, *Annual Report of the Departments of Health and Human Services and Justice: Health Care Fraud and Abuse Control Program FY 2014* (Washington, DC: Mar. 16, 2015).



Additionally, we have recently reported on cases of potential fraud in various programs.<sup>45</sup>

- As we reported in August 2014, we identified 28 cases of potential fraud related to Supplemental Nutrition Assistance Program benefits (food stamps).<sup>46</sup> Over 30 days, we detected 28 postings from one popular e-commerce website that advertised the potential sale of food stamp benefits in exchange for cash, services, and goods—including places to live, vehicles, cooking and cleaning services, phones, and beer. We recommended that the Department of Agriculture take steps to improve antifraud efforts, such as reassessing Federal financial incentives for cost-effective State activities and issuing guidance to enhance the consistency of State reporting on these efforts.
- In December 2014, we reported approximately \$39 million of Hurricane Sandy assistance as at risk for potential fraud or improper payments.<sup>47</sup> Among other issues, these cases included instances in which Social Security numbers were not valid or were used by multiple recipients, rental assistance was received while the recipient was incarcerated, and duplicate payments were not flagged by the Federal Emergency Management Agency (FEMA). We recommended that FEMA assess the cost and feasibility of obtaining additional data—such as the Social Security Administration’s full death file or data necessary to verify self-reported information on private homeowner’s insurance—to help identify potentially fraudulent or improper applications for assistance.
- As we reported in May 2015, we found thousands of Medicaid beneficiaries and hundreds of providers involved in potential improper or fraudulent payments in four selected States (Arizona, Florida, Michigan, and New Jersey) during fiscal year 2011, which at the time of our study was the most recent year for which reliable data were available.<sup>48</sup> For example, people using the identities of about 200 deceased beneficiaries received about \$9.6 million in Medicaid benefits subsequent to the beneficiaries’ deaths, and about 90 providers had suspended or revoked licenses in the State where they performed Medicaid services yet received a combined total of at least \$2.8 million from those States. We recommended that CMS issue guidance for screening beneficiaries who are deceased and supply more-complete data for screening Medicaid providers. HHS concurred with both of the recommendations and stated it would provide State-specific guidance to address them.

While fraud can be more difficult to address than other types of improper payments, implementing strategies to reduce improper payments in general may also help to reduce opportunities for fraud. In July 2015, we issued *A Framework for Managing Fraud Risks in Federal Programs* (Framework).<sup>49</sup> The Framework identifies a comprehensive set of leading practices that serve as a guide for program managers to use when developing or enhancing efforts to combat fraud in a strategic, risk-based manner. Minimizing fraud risks in Federal agency programs can help reduce improper payments and enhance program integrity. The leading practices described in the Framework include control activities to prevent, detect, and respond to fraud, with an emphasis on prevention, as well as structures and environmental factors that influence or help managers achieve their objective to mitigate fraud risks. In addition, the Framework calls for management to conduct monitoring and incorporate feedback on an ongoing basis. As the steward of taxpayer dollars, Federal managers have the ultimate responsibility in overseeing how hundreds of billions of dollars are spent annually. Thus, they are well positioned to use these practices, while considering the related fraud risks as well as the associated costs and benefits of implementing the practices, to help ensure that taxpayer resources are spent efficiently and effectively.

<sup>45</sup> Where appropriate, we referred cases of potential fraud to the appropriate officials for further review.

<sup>46</sup> GAO, *Supplemental Nutrition Assistance Program: Enhanced Detection Tools and Reporting Could Improve Efforts to Combat Recipient Fraud*, GAO-14-641 (Washington, DC: Aug. 21, 2014).

<sup>47</sup> GAO, *Hurricane Sandy: FEMA Has Improved Disaster Aid Verification but Could Act to Further Limit Improper Assistance*, GAO-15-15 (Washington, DC: Dec. 12, 2014).

<sup>48</sup> GAO, *Medicaid: Additional Actions Needed to Help Improve Provider and Beneficiary Fraud Controls*, GAO-15-313 (Washington, DC: May 14, 2015).

<sup>49</sup> GAO, *A Framework for Managing Fraud Risks in Federal Programs*, GAO-15-593SP (Washington, DC: July 2015).

UNRELIABLE ESTIMATES AND AGENCY NONCOMPLIANCE HINDER EFFORTS TO  
UNDERSTAND CAUSES AND EXTENT OF THE ISSUE

While there are positive steps being taken toward estimating and reducing improper payments, agencies continue to face challenges in these areas. In our report on the *Fiscal Year 2014 Financial Report of the United States Government*, we continued to report a material weakness in internal control related to improper payments because the Federal Government is unable to determine the full extent to which improper payments occur and reasonably assure that appropriate actions are taken to reduce them.<sup>50</sup> Challenges include risk assessments that may not accurately assess the risk of improper payment, risk-susceptible programs that did not report improper payment estimates, estimation methodologies that may not produce reliable estimates, and noncompliance with legislative requirements.

*Potentially Inaccurate Risk Assessments*

Agencies are required to conduct their own risk assessments to determine which of their programs are susceptible to significant improper payments and then estimate improper payments for these susceptible programs. However, issues related to certain agencies' risk assessments have been identified, which calls into question whether these agencies are actually identifying all programs that are susceptible to significant improper payments.

- We reported in December 2014 that the Department of Energy's (DOE) improper payment risk assessments did not always include a clear basis for risk determinations and did not fully evaluate other relevant risk factors, such as deficiencies in key controls for preventing and detecting improper payments.<sup>51</sup> For example, some assessments we reviewed did not contain enough information for us to determine how the entities responsible for making payments on behalf of the department arrived at their risk determinations, raising questions about who at the agency was responsible for reviewing and approving risk assessments for consistency. In another example, agency officials told us that contract audits were not always performed in a timely manner, which introduces a risk that improper payments will also not be identified in a timely manner.<sup>52</sup> DOE's risk assessment guidance did not require that programs consider risk factors related to internal control deficiencies, such as untimely contract audits. DOE concurred with our recommendations to improve its risk assessments, including revising guidance on how programs are to address risk factors and directing programs to consider other risk factors likely to contribute to improper payments.
- In April 2015, the Treasury Inspector General for Tax Administration (TIGTA) continued to report that IRS's risk assessment process did not provide a valid assessment of improper payments in certain IRS programs and did not adequately address specific risks commonly associated with verifying refundable credit claims.<sup>53</sup> For example, while IRS designated the Additional Child Tax Credit program as low risk, TIGTA estimated that fiscal year 2013 improper payments in this program were from 25.2 percent to 30.5 percent, or \$5.9 billion to \$7.1 billion.

*Programs That Do Not Report Improper Payment Estimates*

We found that not all agencies had developed improper payment estimates for all of the programs and activities they identified as susceptible to significant improper payments. Specifically, two Federal agencies did not report estimated improper payment amounts for four risk-susceptible programs. For example, HHS did not report an improper payment estimate in fiscal year 2014 for its Temporary Assistance for Needy Families (TANF) program, which had program outlays of about \$16.3 billion and, according to HHS's fiscal year 2014 agency financial report, is considered sus-

<sup>50</sup> GAO, *Financial Audit: U.S. Government's Fiscal Years 2014 and 2013 Consolidated Financial Statements*, GAO-15-341R (Washington, DC: Feb. 26, 2015).

<sup>51</sup> GAO, *Improper Payments: DOE's Risk Assessments Should Be Strengthened*, GAO-15-36 (Washington, DC: Dec. 23, 2014).

<sup>52</sup> Contract auditing assists in achieving prudent contracting by providing those responsible for government procurement with financial information and advice relating to contractual matters and the effectiveness, efficiency, and economy of contractors' operations. Depending on the contract type, various contract audit activities can occur in the preaward, award, and administration and management phases of a contract.

<sup>53</sup> TIGTA, *Assessment of Internal Revenue Service Compliance With the Improper Payment Reporting Requirements in Fiscal Year 2014*, Reference Number 2015-40-044 (Washington, DC: Apr. 27, 2015).

ceptible to significant improper payments by OMB.<sup>54</sup> HHS cited statutory limitations for its State-administered TANF program as prohibiting it from requiring States to participate in developing an improper payment estimate for the program.<sup>55</sup> In its March 2012 report on the department's compliance with improper payment reporting, HHS's OIG recommended that the department develop an improper payment estimate for the TANF program and, if necessary, seek statutory authority to require State participation in such a measurement.<sup>56</sup>

*Potentially Unreliable or Understated Estimates*

While some programs did not report estimates, improper payment estimates for certain programs may be unreliable. For example, because of long-standing financial management weaknesses, the Department of Defense (DOD) reported in its fiscal year 2014 agency financial report that it could not demonstrate that all payments subject to improper payment estimation requirements were included in the populations of payments for review. Therefore, its improper payment estimates, including the estimate for its Defense Finance and Accounting Service (DFAS) Commercial Pay program, may not be reliable. We previously reported that the foundation of reliable statistical sampling estimates is a complete, accurate, and valid population from which to sample.<sup>57</sup> While DFAS Commercial Pay's improper payment estimate is low, its program outlays are significant—approximately \$305 billion for fiscal year 2014. Consequently, a small change in the program's estimated error rate could result in a significant change in the dollar value of its improper payment estimate.

Further, flexibility in how agencies are permitted to implement improper payment estimation requirements can contribute to inconsistent or understated estimates. For example, in February 2015, we reported that DOD uses a methodology for estimating TRICARE improper payments that is less comprehensive than the methodology CMS used for Medicare.<sup>58</sup> Though the programs are similar in that they pay providers on a fee-for-service basis and depend on contractors to process and pay claims, TRICARE's methodology does not examine the underlying medical record documentation to discern whether each sampled payment was supported or whether the services provided were medically necessary. On the other hand, Medicare's methodology more completely identifies improper payments beyond those resulting from claim processing errors, such as those related to provider noncompliance with coding, billing, and payment rules. As a result, the estimated improper payment error rates for TRICARE and Medicare are not comparable, and TRICARE's error rate is likely understated.<sup>59</sup> In addition, corrective actions for TRICARE improper payments do not address issues related to medical necessity errors—a significant contributor to Medicare improper payments. We recommended that DOD implement a more comprehensive TRICARE improper payment methodology and develop more robust corrective action plans that address the underlying causes of improper payments. DOD concurred with our recommendations and identified steps needed to implement them.

<sup>54</sup>The three remaining risk-susceptible programs that did not report an improper payment estimate for fiscal year 2014 were in the Department of Homeland Security (DHS)—the Customs and Border Protection Administratively Uncontrollable Overtime, Port Security Grant, and Federal Emergency Management Agency Vendor Pay (non-Disaster Relief Fund) programs. According to its fiscal year 2014 agency financial report, DHS plans to report improper payment estimates for these programs in fiscal year 2015.

<sup>55</sup>The term State-administered refers to Federal programs that are managed on a day-to-day basis at the State level to carry out program objectives. In our June 2004 report, we recommended that HHS gather information on a recurring basis from all States on their internal control systems and noted that HHS may determine that it needs legislative action to direct States to provide the information. GAO, *TANF and Child Care Programs: HHS Lacks Adequate Information to Assess Risk and Assist States in Managing Improper Payments*, GAO-04-723 (Washington, DC: June 18, 2004). While HHS took some steps to collect more information on States' internal controls, this does not constitute an improper payment estimate for TANF.

<sup>56</sup>HHS's OIG stated in subsequent reports that it has continued to emphasize this recommendation, but the recommendation remains unimplemented.

<sup>57</sup>GAO-15-341R and GAO, *DOD Financial Management: Significant Improvements Needed in Efforts to Address Improper Payment Requirements*, GAO-13-227 (Washington, DC: May 13, 2013).

<sup>58</sup>GAO, *Improper Payments: TRICARE Measurement and Reduction Efforts Could Benefit from Adopting Medical Record Reviews*, GAO-15-269 (Washington, DC: Feb. 18, 2015). TRICARE is a health care program for military service members, retirees, and their families.

<sup>59</sup>For fiscal year 2014, estimated error rates were 0.9 percent for TRICARE and 12.7 percent for Medicare Fee-for-Service.

### Noncompliance With Criteria in IPERA

In August 2015, we analyzed agency financial reports and OIG reports for fiscal years 2012 through 2014 and identified five programs with improper payment estimates greater than \$1 billion that have been noncompliant with at least one of the six criteria listed in IPERA for 3 consecutive years, as shown in table 2.<sup>60</sup> These five programs account for \$75.9 billion, or 61 percent of the fiscal year 2014 government-wide reported improper payment estimate.

**Table 2: Major Programs Noncompliant With Improper Payment Requirements for 3 Consecutive Years**

Program	Agency	Reported noncompliance issues
Medicare Fee-for-Service	Department of Health and Human Services	<ul style="list-style-type: none"> <li>Improper payment error rate equal to or greater than 10 percent</li> <li>Reduction target not met</li> </ul>
Earned Income Tax Credit	Department of the Treasury	<ul style="list-style-type: none"> <li>Improper payment error rate equal to or greater than 10 percent</li> <li>Reduction target not published <sup>a</sup></li> </ul>
Unemployment Insurance	Department of Labor	<ul style="list-style-type: none"> <li>Improper payment error rate equal to or greater than 10 percent</li> <li>Reduction target not published <sup>b</sup></li> </ul>
Supplemental Security Income	Social Security Administration	<ul style="list-style-type: none"> <li>Reduction target not met</li> </ul>
School Lunch	Department of Agriculture	<ul style="list-style-type: none"> <li>Improper payment error rate equal to or greater than 10 percent</li> <li>Reduction target not met</li> </ul>

Source: GAO summary of agency financial reports and inspector general reports. | GAO-16-92T.

<sup>a</sup>The Department of the Treasury did not publish improper payment reduction targets for the Earned Income Tax Credit for fiscal years 2012 and 2013.

<sup>b</sup>The Department of Labor did not publish a reduction target for fiscal year 2014 for the Unemployment Insurance program in its fiscal year 2013 agency financial report. However, according to <https://paymentaccuracy.gov/>—the Federal Government’s website for improper payment information—the fiscal year 2014 reduction target for the Unemployment Insurance program was 10 percent, which the department did not meet.

According to IPERA, if a program is found to be noncompliant:

- in a fiscal year, the agency must submit a plan to Congress describing the actions that the agency will take to bring the program into compliance;
- for 2 consecutive fiscal years, and if OMB determines that additional funding would help the agency improve, the agency and OMB may take steps to transfer or request additional funding for intensified compliance efforts; and
- for 3 consecutive years, the agency must submit to Congress a reauthorization proposal for each noncompliant program or activity or any proposed statutory changes the agency deems necessary to bring the program or activity into compliance.

Congressional oversight is important to help ensure that agencies and OMB effectively implement these requirements.

### STRATEGIES FOR REDUCING IMPROPER PAYMENTS INCLUDE PREVENTIVE AND DETECTIVE CONTROLS AND COMMITMENT TO IMPLEMENTING REQUIRED ACTIONS

We have previously reported a number of strategies that can help agencies in reducing improper payments. After identifying and analyzing the root causes of improper payments, implementing effective preventive and detective controls that address those root causes could help advance the Federal Government’s efforts to reduce improper payments. In addition, the level of importance Federal agencies and the administration place on the efforts to implement the requirements established by IPERA and other laws and related guidance will be a key factor in determining

<sup>60</sup>In December 2014, we reported on agency compliance with the criteria contained in IPERA for fiscal year 2013, as reported by OIGs. See GAO, *Improper Payments: Inspector General Reporting of Agency Compliance under the Improper Payments Elimination and Recovery Act*, GAO-15-87R (Washington, DC: Dec. 9, 2014).

their overall effectiveness in reducing improper payments and ensuring that Federal funds are used efficiently and for their intended purposes.

Implementing strong preventive controls can serve as the frontline defense against improper payments. Proactively preventing improper payments increases public confidence in the administration of benefit programs and avoids the difficulties associated with the “pay and chase” aspects of recovering overpayments.<sup>61</sup> The following are examples of preventive strategies, some of which are currently under way.

- **Up-front eligibility validation through data sharing.** Data sharing allows entities that make payments—to contractors, vendors, participants in benefit programs, and others—to compare information from different sources to help ensure that payments are appropriate. One example of data sharing is agencies’ use of Social Security death data to guard against improper payments to deceased individuals or those who use deceased individuals’ identities.<sup>62</sup>
- **Predictive analytic technologies.** The Small Business Jobs Act of 2010 requires CMS to use predictive modeling and other analytic techniques—known as predictive analytic technologies—both to identify and to prevent improper payments under the Medicare Fee-for-Service program.<sup>63</sup> Through analysis of provider networks, billing patterns, and beneficiary utilization patterns, unusual or suspicious patterns or abnormalities can be identified and used to prioritize investigation of suspicious transactions.
- **Program design review and refinement.** Improper payments may be caused by specific aspects of a given program, providing agencies with opportunities to address improper payments through improved program design. For example, to the extent that provider enrollment and eligibility verification problems are identified as a significant root cause in a specific program, agencies may look to establish enhanced controls in this area. Further, exploring whether certain complex or inconsistent program requirements—such as eligibility criteria and requirements for provider enrollment—contribute to improper payments may lend insight to developing effective strategies for enhancing compliance and may identify opportunities for streamlining or changing eligibility or other program requirements.

Although strong preventive controls remain the frontline defense against improper payments, effective detection techniques can help to quickly identify and recover those overpayments that do occur. Detection activities play a significant role not only in identifying improper payments but also in providing data on why these payments were made and, in turn, highlighting areas that need strengthened preventive controls. Further, strong detective controls can act as a deterrent to those intentionally trying to obtain overpayments. The following are examples of key detection techniques.

- **Data mining.** Data mining is a computer-based control activity that analyzes diverse data for relationships that have not previously been discovered. Data mining allows an organization to efficiently query a financial system to identify potential improper payments, such as multiple payments for the same invoice to the same recipient on the same date, or to the same address. In another example, in May 2015, we reported that the Department of Transportation’s Federal transit benefit program established procedures for conducting debit card transaction data mining, including reviews of debit card transactions to identify potential misuse or irregular activity, such as the purchase of nontransit items.<sup>64</sup> Similarly, we have found that if GAO had direct access to the National Directory of New Hires, which includes wage and employment information, from HHS, this would facilitate the identification of possible improper payments in a variety of Federal programs across the Federal Government.
- **Recovery auditing.** Recovery auditing is used to identify and recover overpayments. IPERA requires agencies to conduct recovery audits, if cost-effective, for

<sup>61</sup> “Pay and chase” refers to the labor-intensive and time-consuming practice of trying to recover overpayments once they have already been made rather than preventing improper payments in the first place. See GAO, *Highlights of a Forum: Data Analytics For Oversight and Law Enforcement*, GAO-13-680SP (Washington, DC: July 2013).

<sup>62</sup> GAO, *Improper Payments: Government-Wide Estimates and Use of Death Data to Prevent Payments to Deceased Individuals*, GAO-15-482T (Washington, DC: Mar. 16, 2015).

<sup>63</sup> Pub. L. No. 111-240, § 4241 (Sept. 27, 2010).

<sup>64</sup> GAO, *Federal Transit Benefit Program: DOT’s Debit-Card Internal Controls Are Designed to Be Consistent with Federal Standards*, GAO-15-497 (Washington, DC: May 29, 2015).

each program or activity that expends \$1 million or more annually.<sup>65</sup> In its fiscal year 2014 agency financial report, HHS reported that the Medicare Fee-for-Service recovery audit program identified approximately \$1.9 billion and recovered \$2.4 billion in overpayments by the end of the fiscal year. The amount collected is higher than the amount identified because it includes overpayments collected in fiscal year 2014 that were identified in previous years.

To determine the full extent of improper payments government-wide and to more effectively recover and reduce them, as we reported in March 2015, continued agency attention is needed to (1) identify programs susceptible to improper payments, (2) develop reliable improper payment estimation methodologies, (3) report on improper payments as required, and (4) implement effective corrective actions based on root cause analysis.<sup>66</sup> For example, as previously stated, agencies with programs that have been noncompliant with criteria in IPERA must take certain actions to bring the programs into compliance. These actions could improve transparency and accountability for agency management of improper payments and provide an opportunity for congressional oversight. We have also reported that agency top management needs to provide greater attention to ensure compliance with the provisions of Federal improper payment laws and related guidance, especially the issues identified in the OIG reports, to help reduce improper payments and ensure that Federal funds are used efficiently and for their intended purposes. Absent such continued efforts, the Federal Government cannot be assured that taxpayer funds are adequately safeguarded. Likewise, implementing recommendations we have previously made to address sources of improper payments in the three programs with the largest estimates—Medicare, Medicaid, and EITC—could significantly contribute to reducing improper payments overall.

#### NEED TO ADDRESS A SIGNIFICANT TAX GAP

The tax gap has been a persistent problem for decades. In January 2012, IRS estimated that the gross tax gap was \$450 billion in tax year 2006 (the most current estimate available).<sup>67</sup> From 2001 to 2006, IRS estimated that the gross tax gap increased by \$105 billion. However, according to IRS during this period the percentage of taxes owed and paid on time remained relatively constant—just over 83 percent. IRS estimated that it would eventually recover about \$65 billion of the gross tax gap through late payments and enforcement actions, leaving an annual estimated net tax gap of about \$385 billion.<sup>68</sup>

In the face of large and growing structural deficits, it is especially important to understand the causes of tax noncompliance and continue to develop new approaches to minimize noncompliance. The sheer size of the net tax gap—equivalent to roughly one-third of total Federal discretionary spending—is reason enough to renew efforts to address its root causes. In addition to its effects on the deficit, tax noncompliance—intentional or not—could discourage compliant taxpayers and undermines the integrity of the tax system and the public's confidence in it. This confidence is critical because the U.S. tax system relies heavily on voluntary compliance. If confidence declines, voluntary compliance is likely to decline as well. As we have previously testified, there are no easy fixes to reducing the tax gap.<sup>69</sup> Rather, the tax gap must be attacked on multiple fronts and with multiple strategies over a sustained period.

<sup>65</sup> Some agencies have reported statutory or regulatory barriers that affect their ability to pursue recovery auditing. For example, the Department of Agriculture has stated that a section of the Department of Agriculture Reorganization Act of 1994 affects the Farm Service Agency's ability to recover improper payments.

<sup>66</sup> GAO, *General Government: Governmentwide Improper Payments*, accessed July 20, 2015, [http://gao.gov/duplication/action\\_tracker/Governmentwide\\_Improper\\_Payments](http://gao.gov/duplication/action_tracker/Governmentwide_Improper_Payments).

<sup>67</sup> According to IRS officials, IRS plans to release an updated tax gap estimate in December 2015, at the earliest, which will be based on data from tax years 2008, 2009, and 2010.

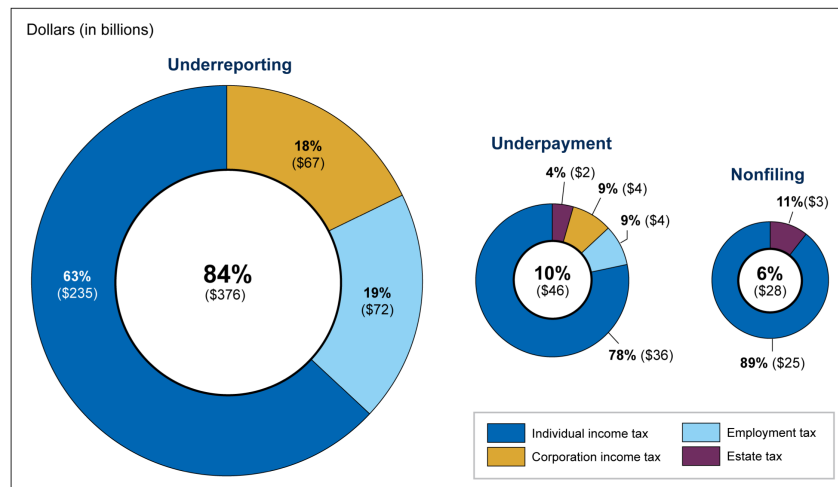
<sup>68</sup> The tax gap does not include taxes due from illegally derived income or various forms of fraud. For example, in general, refund fraud related to identity theft would not be included in the tax gap estimate because it does not involve evading a tax liability. For filing season 2013, IRS estimated that attempted identity theft refund fraud totaled about \$30 billion, of which \$5.8 billion was paid out.

<sup>69</sup> GAO, *Tax Gap: Sources of Noncompliance and Strategies to Reduce It*, GAO-12-651T (Washington, DC: Apr. 19, 2012), and *Tax Gap: Complexity and Taxpayer Compliance*, GAO-11-747T (Washington, DC: June 28, 2011).

## UNDERREPORTING IS THE BIGGEST SOURCE OF THE TAX GAP

The tax gap is spread across different types of taxpayer noncompliance and five types of taxes that IRS administers: individual income, corporate income, employment, estate, and excise taxes. The tax gap arises when taxpayers do not report their full tax liability on filed tax returns (underreporting), do not pay the full amount of taxes reported on filed returns (underpayment), or do not file a required tax return (nonfiling). As shown in figure 3, underreporting accounts for the largest portion of the tax gap—\$376 billion of the \$450 billion tax gap for tax year 2006. Underreporting of tax liabilities can occur when taxpayers report earning less income than they actually earned or report greater tax deductions, credits, or other tax benefits than they were entitled to claim.<sup>70</sup> Individual income tax underreporting accounted for most—about \$235 billion—of the underreporting tax gap estimate for tax year 2006. Of that amount, IRS reported that over half—\$122 billion—comes from individuals' business income, including income from (1) sole proprietorships (persons who own unincorporated businesses by themselves), (2) partnerships (a group of two or more individuals or entities, such as corporations or other partnerships, that carry on a business), and (3) S-corporations (corporations meeting certain requirements that elect to be taxed under subchapter S of the Internal Revenue Code).

Figure 3: Estimated Gross (\$450 Billion) Tax Gap Noncompliance by Source and Type of Tax for Tax Year 2006



Source: GAO analysis of IRS information. | GAO-16-92T

Note: Individual income tax includes individual business income tax. Excise tax is not shown in this graphic as IRS does not have an excise tax estimate for underreporting noncompliance or nonfiling noncompliance and estimates it is less than 1 percent of total underpayment noncompliance. In addition, IRS does not have an employment tax estimate for nonfiling noncompliance.

## REDUCING THE TAX GAP WOULD HELP IMPROVE THE GOVERNMENT'S FISCAL POSITION AND PROMOTE TAXPAYER CONFIDENCE

As we have previously reported, completely closing the tax gap is not feasible as it would entail more intrusive enforcement and more burdensome recordkeeping or reporting than the public is willing to accept, and more resources than IRS is able to commit.<sup>71</sup> However, given the size of the gross tax gap, which is larger than the interest the United States paid on its debt in fiscal year 2014 (\$430 billion), even modest reductions would yield significant financial benefits and help improve the government's fiscal position. For example, just a 1 percent reduction in the 2006 net

<sup>70</sup>Other tax benefits available to taxpayers are exemptions and exclusions from income and preferential tax rates, such as those for capital gains.

<sup>71</sup>GAO-12-651T.

tax gap would recover about \$3.8 billion more in revenue legally owed for just that one year. For illustrative purposes,<sup>72</sup> this amount of revenue could fund:

- nearly 90 percent of the legislative branch; or
- over half the judicial branch; or
- the entire National Park Service; or
- the combined operations of the U.S. Census Bureau (\$1.1 billion), the Small Business Administration (\$0.9 billion), the Smithsonian (\$0.8 billion), the Library of Congress (\$0.6 billion) and the National Archives (\$0.4 billion).

Even when unintentional, tax noncompliance could discourage compliant taxpayers and undermines the integrity of the tax system and the public's confidence in it. For example, consider two taxpayers with similar tax situations—one who pays the full amount of tax due and the other who does not. The one who does not pay taxes is not meeting his or her obligation to fund government services and, in effect, shifts the fiscal burden to those who do pay. Also, IRS devotes resources to attempt to collect taxes due from the noncompliant taxpayer, resources that could be used for other purposes.

Likewise, noncompliance can create an unfair competitive advantage between businesses, as those that do not pay tax debts are avoiding costs that tax-compliant businesses are incurring. For instance, our past investigations identified instances in which Federal contractors with tax debts won awards based on price differentials over tax compliant contractors. We made several recommendations to address the issue of Federal contractors that do not pay their tax debts, most of which were implemented.<sup>73</sup>

KEY FACTORS CONTRIBUTING TO THE TAX GAP INCLUDE LIMITED THIRD-PARTY INFORMATION REPORTING, RESOURCE TRADE-OFFS, AND COMPLEXITIES IN THE TAX CODE

Our past work has found that three important factors contributing to the tax gap are the extent to which income is reported to IRS by third parties, IRS's resource trade-offs, and tax code complexity.

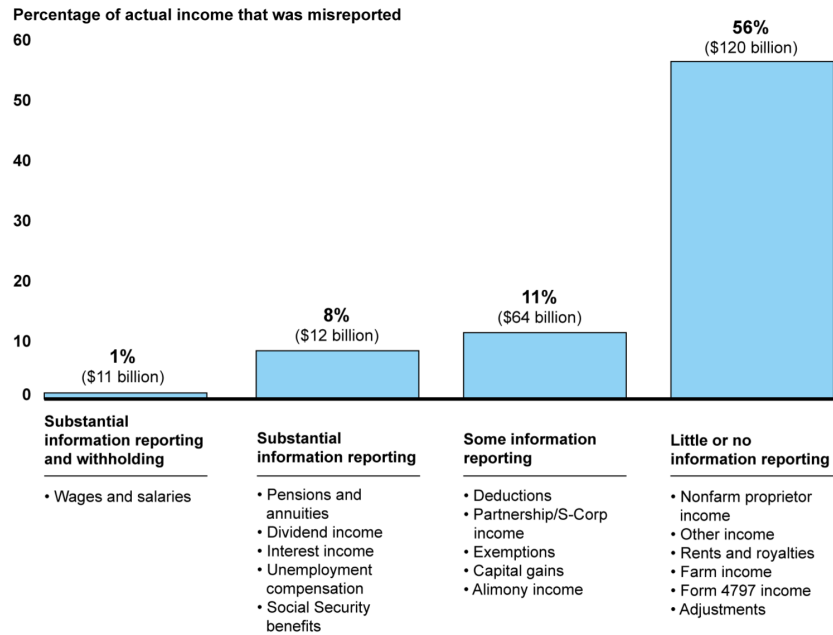
- **Limited third-party information reporting.** The extent to which individual taxpayers accurately report their income is correlated to the extent to which their income is reported to them and IRS (or taxes on that income are withheld) by third parties. For example, according to 2006 IRS data, for types of income for which there is little or no third-party information reporting, such as business income, over half of these types of income were misreported (see fig. 4). In contrast, employers report most wages and salaries to employees and IRS through Forms W-2 (Wage and Tax Statement). As shown below, nearly 99 percent of these types of income were accurately reported on individual tax returns. Similarly, banks and other financial institutions provide information returns (Forms 1099) to account holders and IRS showing taxpayers' annual income from some types of investments, and over 90 percent of these types of income were accurately reported.

<sup>72</sup> Examples are based on fiscal year 2015 appropriations.

<sup>73</sup> We made recommendations to DOD, IRS, the Financial Management Service, and OMB to address issues with delinquent Federal contractors. See GAO, *Financial Management: Thousands of Civilian Agency Contractors Abuse the Federal Tax System with Little Consequence*, GAO-05-637 (Washington, DC: June 16, 2005), and *Financial Management: Some DOD Contractors Abuse the Federal Tax System with Little Consequence*, GAO-04-95 (Washington, DC: Feb. 12, 2004).



**Figure 4: Effect of Third-Party Information Reporting on Taxpayer Compliance, Tax Year 2006**



Source: IRS. | GAO-16-92T

Note: Percentages are not intended to sum to 100 percent. Each percentage shown refers to a different category of information reporting. For example, for income subject to substantial information reporting and withholding (such as wages and salaries), 1 percent of these income amounts are misreported; 99 percent of these income amounts are properly reported.

- **Resource trade-offs.** Since fiscal year 2010, IRS's annual appropriations have declined by \$1.2 billion, and since fiscal year 2009, staffing has fallen by about 11,000 full-time equivalent employees.<sup>74</sup> At the same time, the agency's workload has increased because of a surge in identity-related refund fraud and the implementation of key provisions of PPACA, among other reasons. As a result of this imbalance, for example, IRS decreased its individual examination (or audit) coverage rate by 20 percent from fiscal years 2013 to 2015. Reducing examinations can reduce revenues collected through such enforcement action and may indirectly reduce voluntary compliance.
- **Tax code complexity.** The Federal tax system contains complex rules that may be necessary to appropriately target tax policy goals, such as providing benefits to specific groups of taxpayers. However, this complexity imposes a wide range of recordkeeping, planning, computing, and filing requirements upon taxpayers. For example, taxpayers who receive income from rents, self-employment, and other sources may be required to make complicated calculations and keep detailed records. This complexity can engender errors and underpaid taxes. Complexity, and the lack of transparency that it can create, can also exacerbate doubts about the tax system's integrity.

Tax expenditures—tax credits, deductions, exclusions, exemptions, deferrals, and preferential tax rates estimated by Treasury to reduce tax revenue by about \$1.2 trillion in fiscal year 2014—can add to tax code complexity in part because they re-

<sup>74</sup> GAO, *Internal Revenue Service: Observations on IRS's Operations, Planning, and Resources*, GAO-15-420R (Washington, DC: Feb. 27, 2015).

quire taxpayers to learn about, determine their eligibility for, and choose between tax expenditures that may have similar purposes. For example, as we reported in 2012, about 14 percent of filers in 2009 (1.5 million of almost 11 million eligible returns) failed to claim an education credit or deduction for which they appear eligible.<sup>75</sup> This complexity may be acceptable if tax expenditures achieve their intended purposes.<sup>76</sup> However, in many cases, their effectiveness is questionable or unknown. We have recommended greater scrutiny of tax expenditures since 1994, as periodic reviews could help determine how well specific tax expenditures achieve their goals and how their benefits and costs (including complexity) compare to those of other programs with similar goals.<sup>77</sup>

By tracking changes in tax laws, paid tax return preparers and tax software developers may help taxpayers navigate the complexities of the tax code. However, some paid preparers may introduce their own mistakes. For example, in a limited study in 2014, we found that 7 of 19 preparers who completed returns for our under-cover investigators made errors with substantial tax consequences.<sup>78</sup> Likewise, using IRS data, we estimated that 60 percent of returns prepared by preparers contained errors.

#### MULTIPLE STRATEGIES ARE NEEDED TO REDUCE THE TAX GAP

IRS's overall approach to reducing the tax gap consists of improving services to taxpayers and enhancing enforcement of the tax laws. In spite of these efforts, the percentage at which taxpayers pay their taxes voluntarily and on time has remained constant over the past three decades. Our past work has demonstrated that no single approach will fully and cost-effectively address noncompliance since the problem has multiple causes and spans different types of taxes and taxpayers. In light of these challenges, the following strategies could help reduce the tax gap and are generally reflected in recommendations we have made to IRS that have not yet been implemented (see table 3) and matters for congressional consideration. A summary of these recommendations and matters for congressional consideration follows.

**Table 3: Strategies to Reduce the Tax Gap by Key Factors Contributing to the Tax Gap**

Limited third-party information reporting	Resource trade-offs	Complexities in the tax code
Enhancing information reporting by third parties	Developing a long-term strategy to enhance budget planning	Ensuring high-quality services to taxpayers
<ul style="list-style-type: none"> <li>• Education payment information</li> <li>• Automated matching</li> <li>• Accelerating W-2 filing deadlines</li> </ul>	<ul style="list-style-type: none"> <li>• Return on investment data</li> <li>• Strategic planning</li> <li>• Reassessing the level of resources devoted to enforcement</li> <li>• Modernizing Information technology</li> </ul>	<ul style="list-style-type: none"> <li>• Telephone service</li> <li>• Online services</li> </ul>
	Collecting more data on noncompliance	Leveraging stakeholders
	<ul style="list-style-type: none"> <li>• Correspondence examinations</li> <li>• Partnerships and S-corporations</li> <li>• Compliance assurance process</li> <li>• Tax gap estimates</li> </ul>	<ul style="list-style-type: none"> <li>• Paid tax preparers</li> <li>• Foreign governments</li> <li>• Whistleblowers</li> </ul>

Source: GAO. | GAO-16-92T

#### ENHANCING INFORMATION REPORTING BY THIRD PARTIES

Information reporting is a powerful tool that reduces tax evasion, helps taxpayers comply voluntarily, and increases IRS's enforcement capabilities. Generally, new requirements on third parties to submit information returns would require statutory

<sup>75</sup> GAO, *Higher Education: Improved Tax Information Could Help Families Pay for College*, GAO-12-560 (Washington, DC: May 18, 2012).

<sup>76</sup> GAO, *Tax Expenditures: IRS Data Available for Evaluations Are Limited*, GAO-13-479 (Washington, DC: Apr. 30, 2013).

<sup>77</sup> GAO, *Government Performance and Accountability: Tax Expenditures Represent a Substantial Federal Commitment and Need to Be Reexamined*, GAO-05-690 (Washington, DC: Sept. 23, 2005) and *Tax Policy: Tax Expenditures Deserve More Scrutiny*, GAO/GGD/AIMD-94-122 (Washington, DC: June 3, 1994). See also GAO, *Tax Expenditures: Background and Evaluation Criteria and Questions*, GAO-13-167SP (Washington, DC: Nov. 29, 2012).

<sup>78</sup> GAO, *Paid Tax Return Preparers: In a Limited Study, Preparers Made Significant Errors*, GAO-14-467T (Washington, DC: Apr. 8, 2014).

changes. We have also identified the following improvements that IRS could make to existing forms and better ways to use them.

- **Education payment information.** We previously recommended that IRS revise Form 1098-T (Tuition Statement) on which educational institutions are required to report to IRS information on qualified tuition and related expenses for higher education. Taxpayers can also use this information to determine the amount of educational tax benefits they can claim on their tax return.<sup>79</sup> IRS allows institutions to report either the amount paid or the amount billed for qualified expenses. IRS officials stated that most institutions report the amount billed and do not report the actual amount paid. The amount billed may be different than from the amount that can be claimed as a credit. For example, the amount billed may not account for all scholarships or grants the student received. In such cases, the Form 1098-T may overstate the amount that can be claimed as a credit, confusing taxpayers. Conversely, if institutions are not providing information on other eligible items, such as books or equipment, taxpayers might be understating their claims. In order to reduce taxpayer confusion and enhance compliance with the requirements, we recommended that IRS revise the form. The administration has sought legislative authority to require reporting of amounts paid. Legislation enacted in June 2015 only allows a taxpayer to claim a credit or deduction for education expenses if he or she received a Form 1098-T from an educational institution.<sup>80</sup> The Joint Committee on Taxation estimates that this requirement will raise approximately \$576 million through 2025 by reducing erroneous claims by taxpayers without valid Forms 1098-T. However, without a requirement for institutions to report amounts paid, taxpayers may remain confused by the information reported to them, and IRS may miss an opportunity to make use of a low-cost, less intrusive tool that could help ensure compliance.
- **Automated matching.** Taking greater advantage of automated processes could enhance some IRS enforcement programs. For example, IRS does not routinely match the K-1 information return—on which partnerships and S corporations report income distributed to partners or shareholders—to income information on tax returns for partners and shareholders that are themselves partnerships and S corporations. Matching such information could provide another tool for detecting noncompliance by these types of entities. In 2014, we recommended that IRS test the feasibility of such matching.<sup>81</sup> IRS reported that it understands the objective of this recommendation and, at such time that resources are available to enhance capabilities, it would consider the proposed methodology of advanced testing. These resource limitations are precisely why we believe that IRS needs to take action to develop better information for making decisions on how to allocate existing resources.
- **Accelerating W-2 filing deadlines.** Accelerating W-2 filing deadlines could help IRS reduce improper EITC payments and help close the tax gap. Specifically, IRS has reported that a common EITC error is misreporting income; however, the timing of deadlines for filing Forms W-2 poses a challenge for enforcement. Rather than holding refunds until all compliance checks can be completed, IRS issues most refunds months before receiving and matching information returns, such as the W-2 to tax returns. As a result, IRS’s “pay and chase” compliance model tries to recover bad refunds and unpaid taxes after matching information and pursuing discrepancies. If IRS had access to W-2 data earlier, it could match such information to taxpayer returns to identify discrepancies with EITC claims and potentially collect additional taxes. Moreover, earlier matching could help IRS prevent issuing billions of dollars of potentially fraudulent refunds because of identity theft.

Treasury recently proposed to Congress that the due date for filing information returns with IRS, including the Form W-2, be moved to January 31st to facili-

<sup>79</sup>GAO, 2009 *Tax Filing Season: IRS Met Many 2009 Goals, but Telephone Access Remained Low, and Taxpayer Service and Enforcement Could Be Improved*, GAO-10-225 (Washington, DC: Dec. 10, 2009).

<sup>80</sup>Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, § 804, 129 Stat 362, 415 (June 29, 2015).

<sup>81</sup>GAO, *Partnerships and S Corporations: IRS Needs to Improve Information to Address Tax Noncompliance*, GAO-14-453 (Washington, DC: May 14, 2014).

tate the use of earnings information in the detection of noncompliance.<sup>82</sup> Because any change to filing deadlines could impose burdens on employers and taxpayers as well as create additional costs to IRS for systems and process changes, Congress and other stakeholders would need information on this impact to fully assess any potential changes. For example, the deadline change could involve upgrades to IRS's information technology systems; logistical challenges coordinating with other agencies, such as the Social Security Administration; and regulatory and policy changes, such as delaying refunds and the start of the filing season.

In August 2014, we recommended that IRS estimate the costs and benefits of accelerating W-2 deadlines and options to implement pre-refund matching using W-2 data as a method to combat the billions of dollars lost to identity refund fraud, allowing the agency more opportunity to match employers' and taxpayers' information.<sup>83</sup> In November 2014, IRS reported that it had convened a working group of internal stakeholders and subject matter experts to identify the costs and benefits of accelerating Form W-2 deadlines. As of July 2015, the working group had drafted a document that is currently under review by other agencies, including Treasury and the Social Security Administration. In September 2015, the Senate Committee on Finance scheduled a committee markup of a bill to prevent identity theft and tax refund fraud, including a provision to modify due dates for filing Forms W-2. The Joint Committee on Taxation estimated that the provision would raise \$151 million in revenue through fiscal year 2025.<sup>84</sup>

#### DEVELOPING A LONG-TERM STRATEGY TO ENHANCE BUDGET PLANNING

A long-term strategy that includes a fundamental reexamination of IRS's operations, programs, and organizational structure could help it operate more effectively and efficiently in an environment of budget uncertainty. IRS has taken some interim steps, but they are not sufficient to stem performance declines.

- **Return on investment data.** IRS could use return on investment data to allocate its enforcement resources and potentially increase revenues. In 2012, we found that IRS was spending most of its enforcement resources on examinations of taxpayers with less than \$200,000 in positive income, even though direct revenue return on investment was highest for examinations of taxpayers with \$200,000 or more in positive income.<sup>85</sup> Therefore, we recommended that IRS conduct a cost-benefit analysis across different enforcement programs and cases within programs to determine whether to reallocate its enforcement resources each year. We demonstrated how a relatively small hypothetical shift in resources could potentially increase direct revenue by \$1 billion annually (as long as the average ratio of direct revenue to cost for each category of returns did not change), without significant negative effects on voluntary compliance. Resource reallocation can also affect tax collections indirectly by influencing the voluntary compliance of nonexamined taxpayers.

Similarly, in a 2009 report, we found that IRS was able to examine only about 1 percent of estimated noncompliant sole proprietors in 2008 even though it had invested nearly a quarter of all revenue agent time toward this purpose.<sup>86</sup> We found that not only are these examinations burdensome for businesses, they are also costly for IRS and yield less revenue than examinations of other categories

<sup>82</sup> By law, employers have until February 28 to file Forms W-2 with the Social Security Administration on paper and until March 31st to file W-2 information electronically, except when those deadlines fall on a weekend or Federal holiday. In that case, the deadline is the next Federal business day.

<sup>83</sup> GAO, *Identity Theft: Additional Actions Could Help IRS Combat the Large, Evolving Threat of Refund Fraud*, GAO-14-633 (Washington, DC: Aug. 20, 2014).

<sup>84</sup> In 2015, the administration also submitted a legislative proposal for FY 2016 to accelerate the filing dates of certain information returns, including the W-2, with an estimated revenue effect of \$1.6 billion for fiscal years 2016 through 2025. However, compared to the provision on which JCT based its estimate, the administration's proposal included additional types of returns and an earlier filing date.

<sup>85</sup> GAO, *Tax Gap: IRS Could Significantly Increase Revenues by Better Targeting Enforcement Resources*, GAO-13-151 (Washington, DC: Dec. 5, 2012).

<sup>86</sup> GAO, *Tax Gap: Limiting Sole Proprietor Loss Deductions Could Improve Compliance but Would Also Limit Some Legitimate Losses*, GAO-09-815 (Washington, DC: Sept. 10, 2009). IRS revenue agents examine taxpayers' tax returns to determine Federal tax liability and compliance with tax law.

of taxpayers, in part because most sole proprietorships have low receipt amounts.

IRS officials reported they have developed a methodology for estimating marginal direct revenue and costs for selected workload categories within their correspondence examination program. They are working to apply this methodology to other categories within that program and to other forms of examinations; however, they expect that effort will be much more complex and time-consuming. As of July 2015, officials do not yet have a timeline for full implementation.

- **Strategic planning.** In June 2014, we reported that IRS's strategic plan did not address budget uncertainty, although there are reasons to believe that funding will be constrained for the foreseeable future.<sup>87</sup> We recommended that IRS reexamine programs, related processes, and organizational structures to determine whether they are effectively and efficiently achieving the IRS mission, and streamline or consolidate management or operational processes and functions to make them more cost-effective. IRS agreed with our recommendation and is taking steps to implement it; for example, according to IRS officials, a new process was developed for building the fiscal year 2017 budget request, which included determining IRS-wide priorities.
- **Reassessing the level of resources devoted to enforcement.** Additional resources for enforcement would enable IRS to contact millions of potentially non-compliant taxpayers it identifies but cannot contact because of budget constraints. Since fiscal year 2010, IRS's enforcement resources have declined by more than 10 percent, from \$5.5 billion to \$4.9 billion in fiscal year 2015. To determine the appropriate level of enforcement resources, we have previously reported that policymakers would need to consider how to balance taxpayer service and enforcement activities and how effectively and efficiently IRS currently uses its resources.<sup>88</sup>
- **Modernizing information technology.** IRS relies on information systems in many aspects of its operations from taxpayer service to compliance and enforcement. Therefore, investing resources to modernize IRS's information systems is an important step toward improving taxpayer compliance. For example, in fiscal year 2009, IRS began funding the Information Reporting and Document Matching (IRDM) program in part to implement two new information reporting requirements focused on merchant card payments and securities basis reporting. IRDM also established a new matching program to identify underreported business income and expanded IRS's ability to use information returns to improve voluntary compliance and accurate reporting of income. Under IRDM, IRS built or enhanced several information systems to sort, match, identify, and manage returns that are likely sources of revenue that IRS could not have easily identified using its existing matching system.<sup>89</sup> IRS has other modernization efforts underway, such as its Customer Account Data Engine 2 investment, which enables daily tax processing and is intended to provide faster refunds to taxpayers, more timely account updates, and faster issuance of taxpayer notices. We have ongoing work to determine the progress of such modernization efforts, and plan to issue a report associated with this work in the spring of 2016.

#### *Collecting More Data on Noncompliance*

A critical step toward reducing the tax gap is to understand the sources and nature of taxpayer noncompliance. We have long encouraged regularly measuring tax noncompliance as well as estimating the tax gap, in part because analyzing the data used to determine the estimate can help identify ways to improve IRS's efforts and increase compliance. IRS continues to measure the extent of taxpayer noncompliance. However, our work has found that IRS does not adequately measure the effect of some specific components of its compliance programs, such as the following:

<sup>87</sup> GAO, *IRS 2015 Budget: Long-Term Strategy and Return on Investment Data Needed to Better Manage Budget Uncertainty and Set Priorities*, GAO-14-605 (Washington, DC: June 12, 2014).

<sup>88</sup> GAO-12-651T.

<sup>89</sup> GAO, *Information Technology: IRS Needs to Improve the Reliability and Transparency of Reported Investment Information*, GAO-14-298 (Washington, DC: Apr. 2, 2014); *IRS Management: Cost Estimate for New Information Reporting System Needs to be Made More Reliable*, GAO-12-59 (Washington, DC: Jan. 31, 2012); and *Information Reporting: IRS Could Improve Cost Basis and Transaction Settlement Reporting Implementation*, GAO-11-557 (Washington, DC: May 19, 2011).

- **Correspondence examinations.** IRS does not have information to determine how its program of examining individual tax returns via correspondence affects the agency's broader strategic goals for compliance, taxpayer burden, and cost. Thus, it is not possible to tell whether the program is performing better or worse from one year to the next. In 2014, we made several recommendations related to monitoring program performance.<sup>90</sup> IRS officials said they will review current documentation and ensure that they establish correspondence audit program objectives and measures and clearly link them to the overall IRS goals and objectives. Officials also said they will update official guidance as warranted and plan to implement this recommendation by March 2016.
- **Partnerships and S-corporations.** In 2014, we found that the full extent of partnership and S-corporation income misreporting is unknown, and that IRS examinations and automated document matching have not been effective at finding most of the estimated misreported income.<sup>91</sup> Further, IRS does not know how income misreporting by partnerships affects taxes paid by partners. We recommended, among other things, that IRS (1) develop a strategy to improve its information on the extent and nature of partnership misreporting and (2) use the information to potentially improve how it selects partnership returns to examine. IRS has developed a strategy, which would involve a multi-year examination effort to collect audit data from a representative, statistical sample of partnerships. In September 2015, IRS officials stated that they were beginning a discussion about implementing the proposed strategy, and therefore do not yet have a timeline for implementation. Without this information, IRS is unable to make fully informed, data-based decisions on examination selection.
- **Compliance Assurance Process (CAP).** IRS does not fully assess the savings it achieves from its CAP—through which large corporate taxpayers and IRS agree on how to report tax issues before tax returns are filed. In 2013, we recommended that IRS track savings from CAP and develop a plan for reinvesting any savings to help ensure the program is meeting its goals.<sup>92</sup> In response to our recommendation, IRS has taken steps to track savings by analyzing and comparing the workload inventory of account coordinators who handle CAP cases against team coordinators who handle non-CAP cases. However, as of September 2015, IRS has not shown how such a workload comparison demonstrated savings from CAP or developed a plan for reinvesting any savings. Without a plan for tracking savings and using the savings to increase examination coverage, IRS cannot be assured that the savings are effectively invested in either CAP or non-CAP taxpayers with high compliance risk.
- **Tax gap estimates.** IRS issued its last detailed study of the tax gap in January 2012, which used tax year 2006 data. According to IRS officials, the next tax gap update is scheduled to be released in December 2015, at the earliest. Without more compliance information, IRS does not have reliable data about its compliance results to fully inform decisions about allocating examination resources across different types of businesses.

#### *Ensuring High-Quality Services to Taxpayers*

IRS provides taxpayers an array of services by telephone, by correspondence, and online. Ensuring high-quality services is a necessary foundation for voluntary compliance, as it can help taxpayers who wish to comply with tax laws but do not understand their obligations. However, in recent years IRS has struggled to maintain or improve services in the following areas.

- **Telephone services.** In fiscal year 2014, taxpayers had to wait an average of about 20 minutes to speak with someone at IRS, more than twice as long as they did in fiscal year 2009, when the average wait time was about 9 minutes. Wait times have increased in part because IRS devoted fewer full-time equivalent employees to answering telephones and because the average time assisting taxpayers with their questions has increased. In December 2014, we recommended that IRS benchmark its telephone service measures to the best in the business.<sup>93</sup> IRS disagreed with this recommendation, noting in February

<sup>90</sup> GAO, *IRS Correspondence Audits: Better Management Could Improve Tax Compliance and Reduce Taxpayer Burden*, GAO-14-479 (Washington, DC: June 5, 2014).

<sup>91</sup> GAO-14-453.

<sup>92</sup> GAO, *Corporate Tax Compliance: IRS Should Determine Whether Its Streamlined Corporate Audit Process Is Meeting Its Goals*, GAO-13-662 (Washington, DC: Aug. 22, 2013).

<sup>93</sup> GAO, *Tax Filing Season: 2014 Performance Highlights the Need to Better Manage Taxpayer Service and Future Risks*, GAO-15-163 (Washington, DC: Dec. 16, 2014).

2015 that it is difficult to identify comparable organizations with a size or scope similar to that of IRS. We disagree that IRS's telephone operations cannot be compared to others. IRS previously benchmarked its telephone level of service measure to both private and public sector organizations, which allowed it to identify options for modifying that measure. IRS uses more than one measure (i.e., level of service) to fully evaluate its telephone performance, and benchmarking all of these measures alongside each other to the best in the business could help inform Congress about resources needed to improve the level of service provided to taxpayers in a budget constrained environment. Accordingly, we believe this recommendation remains valid and should be implemented.

- **Online services.** Taxpayers benefit from online services because they can research large amounts of tax guidance, the services are available 24 hours a day, and there is no waiting to speak to a telephone representative. While IRS's website provides some basic tools to request personalized information, such as the status of refunds, the website does not give taxpayers interactive personal account access. The National Taxpayer Advocate, the Electronic Tax Administration Advisory Committee, and others have all recommended that IRS provide taxpayers with online access to their accounts, including ways to resolve compliance problems. In December 2011 and April 2013, we recommended that IRS develop a long-term strategy to improve web services.<sup>94</sup>

As of July 2015, IRS reported that it is integrating online services as a key component of its new Service on Demand (SOD) strategy, which aims to deliver service improvements across different taxpayer interactions, such as individual account assistance, refunds, identity theft, and billings and payments. However, the SOD strategy does not include specific goals, performance metrics, or implementation time frames. A comprehensive long-term strategy for online services that includes these characteristics—whether or not it is incorporated into a broader strategy such as SOD—would help ensure that IRS is maximizing the benefit to taxpayers from this investment and reduce costs in other areas, such as IRS's telephone operations. Further, it could address procedures to better protect online accessible data, which are especially important after the data breach discovered in May 2015 in which individuals used IRS's online services to gain access to information from over 330,000 taxpayers. Thus, we believe this recommendation remains valid and should be implemented.

#### *Leveraging Stakeholders*

Another way IRS may be able to reduce the tax gap is by leveraging stakeholders. Given the complexities in the tax code, taxpayers and IRS can benefit from the expertise of tax return preparers and information shared by foreign governments and whistleblowers.

- **Paid tax return preparers.** Over half of all taxpayers rely on the expertise of a paid preparer to provide advice and help them meet their tax obligations. IRS regards paid preparers as a critical link between taxpayers and the government. Consequently, paid preparers are in a position to have a significant impact on the Federal Government's ability to collect revenue and minimize the tax gap. We have previously reported that for IRS to improve its enforcement of tax laws, it must continue to seek ways to leverage paid preparers to improve tax compliance.<sup>95</sup>
- **Foreign governments.** Information from foreign governments is also important to help improve tax compliance. Increasingly, tax authorities around the world are exchanging information with other countries to administer and enforce the tax laws of their respective countries. Under the Foreign Account Tax Compliance Act,<sup>96</sup> for example, U.S. financial institutions and other entities are required to withhold a portion of certain payments made to foreign financial institutions, if those institutions have not entered into an agreement with IRS to report U.S. account holders' details to IRS. We have previously reported that it is particularly important that the United States continues to develop and

<sup>94</sup> GAO, *IRS Website: Long-Term Strategy Needed to Improve Interactive Services*, GAO-13-435 (Washington, DC: Apr. 16, 2013), and *2011 Tax Filing: Processing Gains, but Taxpayer Assistance Could Be Enhanced by More Self-Service Tools*, GAO-12-176 (Washington, DC: Dec. 15, 2011).

<sup>95</sup> GAO, *High-Risk Series: An Update*, GAO-13-283 (Washington, DC: Feb. 2013). As discussed later in this statement, however, additional regulation of paid preparers could improve the accuracy of returns they prepare.

<sup>96</sup> Pub. L. No. 111-147, Title V, 124 Stat. 71, 97-117 (Mar. 18, 2010).

maintain cooperative relationships with other countries to help ensure that U.S. taxpayers comply with U.S. tax laws.<sup>97</sup>

- **Whistleblowers.** Whistleblowers provide IRS information on suspected non-compliance. They have the potential to help IRS collect billions in tax revenue that may otherwise go uncollected. Since IRS expanded its whistleblower program in 2007, it has collected over \$1 billion because of whistleblower claims.<sup>98</sup> We have ongoing work for this committee that focuses on improving IRS's communication with whistleblowers and the timeliness of claims processing, among other things, which could help IRS recover more unpaid tax revenues.<sup>99</sup>

#### *Considering Legislative Action*

Given that the tax gap has been a persistent issue, we have previously reported that reducing it will require targeted legislative actions, including the following:

- **Additional third-party information reporting.** As noted earlier, taxpayers are much more likely to report their income accurately when the income is also reported to IRS by a third party. In 2008 and 2009, we suggested Congress consider expanding third-party information reporting to include payments for services to rental real estate owners and payments for services provided by corporations, respectively.<sup>100</sup> In 2010, the Joint Committee on Taxation estimated potential revenue increases for a 10-year period to be \$2.5 billion for third-party information reporting of rental real estate service payments and \$3.4 billion for third-party information reporting of service payments to corporations. Congress enacted a more expansive regime in 2010, covering reporting of payments for goods as well as services, and subsequently repealed these provisions. A more narrow extension of reporting requirements of payments for services provided by corporations and for services provided to rental real estate owners remains an important option for improving compliance.
- **Enhanced electronic filing.** Requiring additional taxpayers to electronically file tax and information returns could help IRS improve compliance in a resource-efficient way. For example, partnerships with more than 100 partners and corporations with assets of \$10 million or more that file at least 250 returns during the calendar year must electronically file their returns. In 2014, we suggested that Congress consider expanding the mandate for partnerships and corporations to electronically file their tax returns, as this could help IRS reduce return processing costs, select the most productive tax returns to examine, and examine fewer compliant taxpayers.<sup>101</sup>
- **Math error authority.** IRS has the authority to correct calculation errors and check for other obvious noncompliance such as claims above income and credit limits. Treasury has proposed expanding IRS's "math error" authority to "correctible error" authority to permit it to correct errors in cases where information provided by the taxpayer does not match information in government databases, among other things. Expanding such authority—which we have suggested Congress consider with appropriate safeguards—could help IRS correct additional errors and avoid burdensome audits and taxpayer penalties.<sup>102</sup> In March 2015,

<sup>97</sup> GAO, *Tax Administration: IRS's Information Exchanges with Other Countries Could Be Improved through Better Performance Information*, GAO-11-730 (Washington, DC: Sept. 9, 2011).

<sup>98</sup> The Tax Relief and Health Care Act of 2006 expanded the IRS whistleblower program, making award payments to whistleblowers mandatory in certain circumstances and directing IRS to create its Whistleblower Office.

<sup>99</sup> We expect to report on our results later this year.

<sup>100</sup> GAO, *Tax Gap: IRS Could Do More to Promote Compliance by Third Parties with Miscellaneous Income Reporting Requirements*, GAO-09-238 (Washington, DC: Jan. 28, 2009), and *Tax Gap: Actions That Could Improve Rental Real Estate Reporting Compliance*, GAO-08-956 (Washington, DC: Aug. 28, 2008).

<sup>101</sup> GAO-14-453. IRS is generally prohibited from requiring those filing fewer than 250 returns annually to electronically file their returns. However, partnerships with more than 100 partners must electronically file regardless of the number of returns they file annually. 26 U.S.C. § 6011(e)(2).

<sup>102</sup> GAO, *Recovery Act: IRS Quickly Implemented Tax Provisions, but Reporting and Enforcement Improvements Are Needed*, GAO-10-349 (Washington, DC: Feb. 10, 2010). GAO recently recommended that IRS assess whether data received from the health insurance marketplaces are sufficiently complete and accurate to be used to correct claims for the premium tax credit on returns, and if the assessment determines that such corrections would be effective, seek legislative "correctible error" authority for this specific purpose. GAO, *Patient Protection and Affordable Care Act: IRS Needs to Strengthen Oversight of Tax Provisions for Individuals*, GAO-15-540 (Washington, DC: July 29, 2015).



the Joint Committee on Taxation estimated that more flexible correctible error authority could raise \$133 million through 2025.

- **Paid preparer regulation.** Establishing requirements for paid tax return preparers could improve the accuracy of the tax returns they prepare. Oregon began regulating preparers in the 1970s and requires testing among other requirements. In August 2008, we found that the odds that a return filed by an Oregon paid preparer was accurate were 72 percent higher than the odds for a comparable return filed by a paid preparer in the rest of the country.<sup>103</sup> In August 2014, IRS reported that 68 percent of all tax returns claiming the EITC in tax years 2006 and 2007 were prepared by paid tax preparers—most of whom were not subject to any IRS regulation—and that from 43 to 50 percent of the returns overclaimed the credit.<sup>104</sup> Similarly, in our undercover visits in 2014 to randomly selected tax preparers, a sample that cannot be generalized, we found errors in EITC claims and non-Form W-2 income reporting (for example, cash tips) resulting in significant overstatement of refunds.<sup>105</sup> Establishing requirements for paid tax return preparers could improve the accuracy of the tax returns they prepare, not just returns claiming EITC. In 2014, we suggested Congress consider granting IRS the authority to regulate paid tax preparers, if it agrees that significant paid preparer errors exist.<sup>106</sup> In September 2015, the Senate Committee on Finance scheduled a committee markup of a bill to introduce legislation that would regulate all paid tax return preparers, which the Joint Committee on Taxation estimated would raise \$135 million in revenue through fiscal year 2025.
- **Tax reform and simplification.** A broader opportunity to address the tax gap involves simplifying the Internal Revenue Code, as complexity can cause taxpayer confusion and provide opportunities to hide willful noncompliance. Fundamental tax reform could result in a smaller tax gap if the new system has fewer tax preferences or complex tax code provisions; such reform could reduce IRS's enforcement challenges and increase public confidence in the tax system. Short of fundamental reform, targeted simplification opportunities also exist. Amending the tax code to make definitions more consistent across tax provisions could help taxpayers more easily understand and comply with their obligations and get the maximum tax benefit for their situations. For example, there are several provisions in the tax code benefiting taxpayers' educational expenses, but the definition of what qualifies as a higher-education expense varies between these tax expenditures.<sup>107</sup>

There are no easy solutions to addressing the tax gap. Reducing the tax gap will require multiple strategies and long-term changes in IRS's operations and systems. Such changes are as important as ever given the Nation's fiscal challenges and require the combined efforts of Congress and IRS. Implementing our recommendations and legislative options could increase revenues and promote savings, leading to greater fiscal stability.

With outlays for major programs, such as Medicare and Medicaid, expected to increase over the next few years, it is critical that actions are taken to reduce improper payments and minimize the tax gap. There is considerable opportunity to improve the government's fiscal position without detrimentally affecting the valuable programs that serve our citizens. For this reason, we will continue to assist Congress by focusing attention on issues related to improper payments and the tax gap.

<sup>103</sup> GAO, *Tax Preparers: Oregon's Regulatory Regime May Lead to Improved Federal Tax Return Accuracy and Provides a Possible Model for National Regulation*, GAO-08-781 (Washington, DC: Aug. 15, 2008).

<sup>104</sup> Internal Revenue Service, *Compliance Estimates for the Earned Income Tax Credit Claimed on 2006-2008 Returns*, Publication 5162 (8-2014) (Washington, DC: Aug. 2014).

<sup>105</sup> GAO, *Paid Tax Return Preparers: In a Limited Study, Preparers Made Significant Errors*, GAO-14-467T (Washington, DC: Apr. 8, 2014). A previous study found similar results: see *Paid Tax Return Preparers: In a Limited Study, Chain Preparers Made Serious Errors*, GAO-06-563T (Washington, DC: Apr. 4, 2006).

<sup>106</sup> GAO-14-467T. Treasury and IRS issued regulations in 2010 and 2011 to require registration, competency testing, and continuing education for paid tax return preparers and to subject these new registrants to standards of conduct in their practice. However, the district court ruled, and the court of appeals affirmed, that IRS did not have the statutory authority to regulate these preparers. *Loving v. IRS*, 917 F. Supp. 2d 67 (D.D.C. 2013), *aff'd* 742 F.3d 1013 (D.C. Cir. 2014).

<sup>107</sup> GAO, *Student Aid and Postsecondary Tax Preferences: Limited Research Exists on Effectiveness of Tools to Assist Students and Families through Title IV Student Aid and Tax Preferences*, GAO-05-684 (Washington, DC: July 29, 2005).

Chairman Hatch, Ranking Member Wyden, and members of the committee, this completes my prepared statement. I would be pleased to answer questions that you may have at this time.

**Appendix I: Programs With Improper Payment Estimates Exceeding \$1 Billion in Fiscal Year 2014**

Program	Agency	Fiscal year 2014 reported improper payment estimates	
		Estimated dollars (in millions)	Estimated error rate (percentage of outlays)
Medicare	Department of Health and Human Services (HHS)	\$59,914	—
<i>Medicare Fee-for-Service (Parts A and B)</i>	<i>HHS</i>	<i>45,754</i>	<i>12.7%</i>
<i>Medicare Advantage (Part C)</i>	<i>HHS</i>	<i>12,229</i>	<i>9.0%</i>
<i>Medicare Prescription Drug (Part D)</i>	<i>HHS</i>	<i>1,931</i>	<i>3.3%</i>
Earned Income Tax Credit	Department of the Treasury	17,700	27.2%
Medicaid	HHS	17,492	6.7%
Unemployment Insurance	Department of Labor	5,604	11.6%
Supplemental Security Income	Social Security Administration (SSA)	5,107	9.2%
Old Age, Survivors, and Disability Insurance	SSA	3,000	0.4%
Supplemental Nutrition Assistance Program	Department of Agriculture (USDA)	2,437	3.2%
School Lunch	USDA	1,748	15.3%
Direct Loan	Department of Education	1,532	1.5%
Public Housing/Rental Assistance	Department of Housing and Urban Development	1,029	3.2%

Source: GAO summary of agencies' data. | GAO-16-92T

**Appendix II: Programs With Estimated Improper Payment Error Rates Exceeding 10 Percent  
in Fiscal Year 2014**

Program	Agency	Fiscal year 2014 reported improper payment estimates	
		Estimated dollars (in millions)	Estimated error rate (percentage of outlays)
<b><i>Estimated error rates above 20 percent</i></b>			
Earned Income Tax Credit	Department of the Treasury	\$17,700	27.2%
School Breakfast	Department of Agriculture (USDA)	923	25.6%
Farm Security and Rural Investment Act Programs	USDA	508	23.1%
<b><i>Estimated error rates from 15 to 20 percent</i></b>			
Loan Deficiency Payments	USDA	0 <sup>a</sup>	18.8%
School Lunch	USDA	1,748	15.3%
<b><i>Estimated error rates from 10 to 15 percent</i></b>			
Disaster Relief—Administration for Children and Families Social Services Block Grant	Department of Health and Human Services (HHS)	9	13.5%
Medicare Fee-for-Service (Parts A and B)	HHS	45,754	12.7%
Disaster Relief (Substance Abuse and Mental Health Services Administration)	HHS	0 <sup>a</sup>	12.7%
Disaster Assistance Loans	Small Business Administration	70	12.0%
Unemployment Insurance	Department of Labor	5,604	11.6%

Source: GAO summary of agencies' data. | GAO-16-92T

<sup>a</sup> Improper payment estimates for these programs are displayed as zero because of rounding.

**QUESTIONS SUBMITTED FOR THE RECORD TO HON. GENE L. DODARO**

**QUESTIONS SUBMITTED BY HON. ORRIN G. HATCH**

**Question.** I am very concerned about the \$19 billion increase in improper payments from 2013 to 2014. Do you have a sense of whether any of that increase was due to changes in our payment systems or in the methodology for estimating improper payments, or whether it represents a true increase in improper payments?

**Answer.** Although error rates for multiple programs increased in fiscal year 2014, the \$19 billion government-wide increase in improper payments was primarily due to increased error rates in 3 programs: Medicare Fee-for-Service, Medicaid, and the Earned Income Tax Credit (EITC).

According to the Centers for Medicare and Medicaid Services (CMS), the increase in the Medicare improper payment rate from 2013 to 2014 was in part a result of an increase in the improper payment rate for home health care due to a change in coverage requirements. The improper payment rate for home health claims increased from 17.3 percent in the fiscal year 2013 agency financial report to 51.4 percent in the fiscal year 2014 report. CMS implemented documentation requirements for physicians ordering home health care as part of the Patient Protection and Affordable Care Act (PPACA) requirement that physicians have a face-to-face meeting with beneficiaries for whom they are ordering home health care. CMS has reported that the provider community had problems meeting the documentation requirement. Effective January 1, 2015, CMS has modified the documentation requirement for physicians ordering home health care and the agency hopes doing so will result in

a lower improper payment rate. Another reason cited for the increase in the improper payment error rate was medical necessity errors for inpatient hospital claims, particularly short stays that were determined to not be medically necessary in an inpatient setting and should have been billed as outpatient. The methodology used to calculate the Medicare improper payment rate remained the same for the fiscal year 2013 and 2014 error rates.

According to the Department of Health and Human Services (HHS) 2014 agency financial report, 80 percent of the fiscal year 2014 improper payments for Medicaid (by dollar amount) were due to verification errors. HHS stated that the verification errors were mostly caused by errors related to State claims processing systems not being fully compliant with new requirements, which indicates that the increase in improper payments was likely due to changes in payment and claims processing systems. These new requirements included that all referring or ordering providers must be enrolled in Medicaid, States must screen providers under a risk-based screening process prior to enrollment, and attending providers must include their National Provider Identifier on all electronically filed institutional claims. Thus, it is not clear whether these errors represent a true increase in improper payments or not. While these requirements will ultimately strengthen Medicaid's integrity, they require systems changes that many States have not fully implemented. HHS stated that it is working with all States to develop corrective action plans and these plans will include implementing new claims processing edits, converting to more sophisticated claims processing systems and implementing a new provider enrollment process, among other actions. Moving forward, GAO has started an examination of CMS' efforts to prevent and reduce Medicaid improper payments with an expected issuance in fall 2016. This work will include an examination of: CMS's oversight of States; State Medicaid program integrity efforts and the impact of Federal involvement on States' efforts; and the Medicaid Integrity Institute. We will provide a copy of this report to the committee when it is available.

According to the Department of the Treasury's (Treasury) fiscal year 2014 agency financial report, the EITC error rate rose from 24.0 percent in fiscal year 2013 to 27.2 percent in fiscal year 2014. The EITC improper payment rate is estimated using a statistically valid sample of returns audited through the IRS's National Research Program (NRP). The NRP conducts annual compliance studies of Form 1040 taxpayers. Treasury indicated that the 2014 estimated EITC improper payment rate of 27.2 percent is consistent in magnitude with the 5-year average of 25 percent and reported no significant changes to its estimation methodology. Treasury reported that 70 percent of fiscal year 2014 EITC improper payments related to authentication errors, including the inability to authenticate qualifying child eligibility requirements, filing status, and eligibility in complex living situations. The remaining 30 percent of EITC improper payments related to verification errors, which include improper income reporting.

*Question.* You have mentioned that some improper payments are associated with poor documentation. In fact, poor documentation appears to be a significant factor in the high amount of Medicare improper payments. This Committee has heard from numerous providers about issues they have experienced because of unclear, inconsistent or contradictory guidance from the Centers for Medicare and Medicaid Services about how to appropriately document certain types of services covered by Medicare. This has resulted in numerous appeals of Medicare coverage decisions and a backlog of nearly 1 million claims in the appeals system.

Why is it important to have good documentation to support government payments?

*Answer.* A lack of sufficient supporting documentation may mask the true causes of improper payments—including fraud. When payments lack the appropriate supporting documentation, their validity cannot be determined. It is possible that these payments were for valid purposes, but it is also possible that the lack of documentation could conceal fraudulent activities.

The Medicare program represents a significant expenditure by the government on behalf of U.S. taxpayers. We have previously reported that there is a problem with fraud and abuse in the Medicare program and the health system broadly. Therefore, the government has a responsibility to ensure that the payments it makes are for medically necessary services actually provided to Medicare beneficiaries. Appropriate medical documentation helps to ensure that services were in fact provided, and that they were medically necessary to treat the beneficiary's condition. Medicare does not request medical documentation to support the vast majority of services provided to Medicare beneficiaries. In fact, CMS reports that less than 1 percent of

Medicare claims undergo medical reviews that require this documentation be submitted.

*Question.* What can be done to address the issues that have led to this huge backlog of claims resulting from disputes over what constitutes adequate documentation?

*Answer.* There is a large backlog of claims in the Medicare appeals process, but there is currently no data on what percent of those appeals relate to medical record documentation issues. However, the Medicare appeals process is an opportunity for providers to submit additional documentation to support their claims or present a rationale for the medical treatment. GAO currently has ongoing work examining the backlog of appeals and HHS's efforts to reduce the number of appeals in the backlog and get appeals resolved earlier. We plan to issue our report on this review in spring 2016 and will provide a copy to the committee at that time.

*Question.* While improper payments are important indicators of program efficiency and effectiveness in the Medicare and Medicaid programs, including payments that do not have adequate supporting documentation in the improper payment estimate may not provide the best indicator of financial risk or liability, as a significant proportion of those payments might actually be accurate payment amounts.

Do you have a sense of the percentage of improper payments that are classified as improper because of documentation issues? And of these do you know the percentage that are determined to have been accurate payment amounts after the documentation issues are resolved?

*Answer.* According to CMS, about 60 percent—or nearly \$27.5 billion—of the improper payments in Medicare can be attributed to insufficient medical record documentation. Based on CMS's reporting, it is not possible to identify the percentage that are determined to have been accurate if and when the documentation issues are resolved. CMS's contractors request documentation from providers multiple times before determining that payments lack sufficient supporting documentation, though providers with claims that are identified as improper during the improper payment estimation process are provided the opportunity to appeal that determination.

According to the fiscal year 2014 HHS agency financial report, 10 percent of the Medicaid improper payment rate can be attributed to administrative and documentation errors, which HHS characterizes as largely insufficient documentation. Similar to Medicare, based on HHS's reporting, it is not possible to identify what percentage of Medicaid payments are determined to be accurate if and when documentation issues are resolved.

*Question.* In your opinion, do we need additional metrics to get a better handle on the financial implications of improper payments in our Medicare and Medicaid programs?

*Answer.* For Medicaid, better metrics are needed to screen providers because verification errors (related to providers) comprised 80 percent of the program's improper payment estimate. For Medicare, we do not believe that additional metrics are needed at this time given CMS's current efforts. CMS publishes an annual detailed report on the results of the Comprehensive Error Rate Testing (CERT) program, CMS's program to estimate the improper payment error rate. The report includes error rates according to provider types, error types, and service types. For instance, one table lists the top 20 services with insufficient documentation errors and another table lists the 20 durable medical equipment items with the highest error rate. CMS also conducts an annual risk adjustment data validation audit to estimate the improper payment rate in Medicare Advantage, which is Medicare's private health plan program. The results of that audit are reported in the HHS agency financial report.

*Question.* We understand that GAO has encountered opposition from the Social Security Administration when seeking access to the National Directory of New Hires, and that access to this database could advance GAO's work in the improper payments area by allowing enhanced data-matching among other things.

*Answer.* Although the National Directory of New Hires (NDNH) is physically stored at SSA's Data Center, HHS maintains and provides some Federal agencies with access to the NDNH for certain purposes. While HHS has acknowledged that the NDNH contains information that GAO could benefit from in conducting its reviews for Congress, HHS has denied GAO direct access to the NDNH based on its interpretation of language in the Social Security Act that specifically authorizes several other uses of the database and prohibits uses or disclosures not expressly pro-

vided for in the act. Notwithstanding HHS's views, GAO has a broad statutory right of access to Federal agency records to facilitate its work across the government. We do not believe that the Congress intended to place the NDNH outside the scope of our access authority—implicitly repealing that authority with respect to the NDNH—when it enacted this provision. We believe that if Congress had intended to limit GAO's broad and longstanding access authority in this context, it would have done so explicitly.

*Question.* What specific benefits might be gained from such access, especially in helping identify improper payments and their causes?

*Answer.* NDNH is a national compilation of State databases of persons newly hired by employers within each State, as well as recipients of earned income, and unemployment insurance information on individuals who have received or applied for unemployment benefits. Direct access to the NDNH could be used to enhance work on a variety of audits, including those related to improper payments and fraud work in programs where eligibility is means-tested. Specifically, by comparing data from the NDNH to data from these types of programs across government, GAO could identify potential improper payments and systemic weaknesses in controls over these programs, and make recommendations for improvements. As noted in my testimony, Federal agencies reported \$125 billion in improper payments for fiscal year 2014; thus, we view the NDNH as an important tool that could be used to help address a significant Federal financial issue.

*Question.* What support can Congress provide to overcome barriers to GAO's access, including statutory changes?

*Answer.* Congress could confirm GAO's right of access to the NDNH. Legislation [H.R. 1162] confirming GAO's right of such access, among other things, passed the House and was favorably reported in the Senate in 2013. While this legislation was not enacted, we would look forward to continuing to work with Congress to confirm GAO's authority and facilitate important work.

*Question.* In a recent report, GAO noted that while the IRS is auditing more tax returns that claim the Earned Income Tax Credit, "the effectiveness of these audits may be limited" because of "regular backlogs" and "unclear correspondence." GAO found that these problems "imposed unnecessary burdens on taxpayers and costs for the IRS." Has the IRS's response to GAO's recommendations convinced you that these audits no longer impose an "unnecessary burden" on taxpayers?

*Answer.* IRS has begun taking actions to address our June 2014 recommendations but has not fully implemented them and IRS data show the backlogs have continued. The agency says it expects to implement the nine recommendations by June 2016.

In response to GAO's findings, IRS analyzed data and took some steps to implement our recommendations to address continued backlogs. For example, IRS officials analyzed correspondence response timeliness data through the end of fiscal year 2014 and found that delays were continuing and more improvements were needed, including further revisions to notices and a revised automated recorded telephone message for taxpayers calling about the status of an audit.

In January 2015, IRS revised its automated telephone message that taxpayers hear when they call. The new message provides taxpayers information on the correspondence audit workload and timeframes and asks that they allow a certain number of days before calling to check on the status of their audit. IRS's use of such automation can divert calls away from tax examiners, give taxpayers better service and more realistic response time frame expectations, and result in more timely IRS responses and more efficient use of resources.

In addition, IRS officials said that they plan to revise notices to allow individual correspondence audit offices to enter a customized response date based on their respective inventory levels at the time notices are sent. To the extent that IRS can be more realistic about audit time frames, IRS tax examiners are less likely to receive taxpayer calls about the status of the audit, leaving them more time to actually conduct audits. Until these revised notices are implemented as expected in January 2016 after necessary programming updates, IRS risks wasting time answering unnecessary calls about audit timeframes, which further delays audit work.

*Question.* What areas of additional legislation would be helpful to address prevention and detection of improper payments?

Answer. Specifically regarding EITC, we have reported that certain legislative actions, such as accelerating W-2 filing deadlines, expanding math error authority, and granting IRS authority to regulate paid preparers, could help reduce EITC improper payments.<sup>1</sup> Specifically, accelerating W-2 filing deadlines could help facilitate the use of earnings information in the detection of EITC noncompliance, while expanding math error authority could allow IRS to correct certain errors during processing of tax returns, including those with EITC claims. Regulating paid tax preparers could help improve the accuracy of tax returns that they prepare, including those with EITC claims.

Regarding HHS's Temporary Assistance for Needy Families (TANF) program, HHS reported in its fiscal year 2015 agency financial report that statutory limitations prevent the agency from requiring States to estimate TANF improper payments. HHS has said it will identify potential solutions to these limitations when working with Congress to reauthorize the program. We support these efforts.

Congress has taken action on the issue of improper payments by passing a series of laws including the Improper Payments Information Act of 2002 (IPIA), the Improper Payments Elimination and Recovery Act of 2010 (IPERA), and the Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA). Congressional oversight is necessary and important to help ensure that agencies and the Office of Management and Budget effectively implement all of the requirements in these laws. Congress should monitor the level of noncompliance reported by inspectors general, as well as the Office of Management and Budget's (OMB) efforts to address improper payment issues and ensure requirements in existing laws are being implemented and are achieving their intended results.

*Question.* What areas of additional legislation would be helpful to reduce the tax gap? What oversight strategies can congressional committees pursue to reduce the tax gap?

Answer. The tax gap has been a persistent problem for decades. We have long said that there is no single approach that will fully or cost-effectively reduce the tax gap since the problem has multiple causes and spans different types of taxes and taxpayers. We have numerous open recommendations to IRS that could help improve its efforts to reduce the tax gap. These recommendations could serve as the basis for Congressional oversight of IRS's efforts to reduce the tax gap. In addition, Congress could consider legislative changes that would be helpful to reduce the tax gap, including (Joint Committee on Taxation estimates shown below in parentheses where available):

- **Additional third-party information reporting.** In 2008 and 2009, we suggested Congress consider expanding third-party information reporting to include payments for services to rental real estate owners (\$2.5 billion) and payments for services provided by corporations (\$3.4 billion), respectively.
- **Math error authority.** Expanding math error authority—which we have suggested Congress consider with appropriate safeguards in 2010—could help IRS correct additional errors and avoid burdensome audits and taxpayer penalties (\$133 million).
- **Paid preparer regulation.** In 2014, we suggested Congress consider granting IRS the authority to regulate paid tax preparers (\$135 million), if it agrees that significant paid preparer errors exist.
- **Tax reform and simplification.** Fundamental tax reform could result in a smaller tax gap if the new system has fewer tax preferences or complex tax code provisions; such reform could reduce IRS's enforcement challenges and increase public confidence in the tax system. Short of fundamental reform, targeted simplification opportunities also exist. Amending the tax code to make definitions more consistent across tax provisions could help taxpayers more easily understand and comply with their obligations and get the maximum tax benefit for their situations. For example, there are several provisions in the tax code benefiting taxpayers' educational expenses, but the definition of what qualifies as a higher-education expense varies between these tax expenditures.
- **Enhanced electronic filing.** In 2014, we suggested that Congress consider expanding the mandate for partnerships and corporations to electronically file

<sup>1</sup> GAO, *Government Efficiency and Effectiveness: Opportunities to Reduce Fragmentation, Overlap, Duplication, and Improper Payments and Achieve Other Financial Benefits*, GAO-15-440T (Washington, DC: Mar. 4, 2015).

their tax returns, as this could help IRS reduce return processing costs, select the most productive tax returns to examine, and examine fewer compliant taxpayers.

*Question.* Medicaid claims are paid by States, and there are some differences in the internal controls that States have in place. Does CMS compute a State-specific improper payment rate, and if so, what is the range in Medicaid improper payment rates across the States, and can you provide Congress with a table showing the improper payment rate for each State?

*Answer.* Yes, CMS estimates State-specific error rates. For 2011, the most recent reporting year for which we obtained this information from CMS, we reported that the estimated State error rates ranged from less than 1 percent to a high of over 50 percent.<sup>2</sup> See the table below for the State-specific error rates for reporting year 2011 that we included in our report. Reporting year 2011 error rates are based on estimates from fiscal years 2008, 2009 and 2010; due to age and other factors these rates likely are no longer reflective of current State error rate estimates.

**State Error Rates Used to Determine HHS's Fiscal Year 2011 Reporting of National Medicaid Improper Payments**

Measurement cycle <sup>a</sup>	State	Combined <sup>b</sup>	
		Error rate	Margin of error
Fiscal year 2008	Alaska	0.6%	0.5%
	Arizona	2.6%	1.9%
	District of Columbia	20.1%	16.0%
	Florida	14.6%	13.0%
	Hawaii	16.8%	5.8%
	Indiana	17.2%	10.5%
	Iowa	4.9%	4.6%
	Louisiana	4.0%	3.1%
	Maine	5.7%	2.4%
	Mississippi	3.5%	3.2%
	Montana	4.4%	6.5%
	Nevada	7.3%	2.6%
	New York	7.8%	4.4%
	Oregon	20.8%	12.0%
	South Dakota	0.9%	0.7%
	Texas	5.1%	3.4%
	Washington	6.4%	4.8%
Fiscal year 2009	Arkansas	4.2%	2.0%
	Connecticut	3.3%	1.3%
	Delaware	5.0%	2.1%

<sup>2</sup> See GAO, *Medicaid: Enhancements Needed for Improper Payments Reporting and Related Corrective Action Monitoring*, GAO-1-229 (Washington, DC: Mar. 29, 2013).



**State Error Rates Used to Determine HHS's Fiscal Year 2011 Reporting of National Medicaid  
Improper Payments—Continued**

Measurement cycle <sup>a</sup>	State	Combined <sup>b</sup>	
		Error rate	Margin of error
	Idaho	1.6%	1.1%
	Illinois	3.8%	2.1%
	Kansas	10.4%	8.0%
	Michigan	69.9%	20.1%
	Minnesota	2.0%	1.5%
	Missouri	2.6%	1.2%
	New Mexico	1.9%	1.1%
	North Dakota	3.2%	2.4%
	Ohio	9.8%	11.5%
	Oklahoma	1.2%	0.9%
	Pennsylvania	4.1%	3.6%
	Virginia	17.4%	11.8%
	Wisconsin	5.7%	7.7%
	Wyoming	8.3%	5.4%
Fiscal year 2010	Alabama	2.4%	1.1%
	California	1.6%	0.9%
	Colorado	6.9%	2.5%
	Georgia	4.7%	2.7%
	Kentucky	2.0%	1.0%
	Maryland	3.2%	1.9%
	Massachusetts	13.4%	2.2%
	Nebraska	2.1%	1.1%
	New Hampshire	1.5%	1.1%
	New Jersey	2.6%	1.6%
	North Carolina	11.9%	15.3%
	Rhode Island	15.6%	5.8%
	South Carolina	18.8%	15.8%
	Tennessee	3.6%	4.6%
	Utah	8.2%	4.9%
	Vermont	8.0%	2.7%
	West Virginia	32.7%	32.2%

Source: CMS data on State improper payment error rates for the Medicaid program (unaudited).

Note: These rates reflect the States' official error rates used to calculate the national error rate and do not reflect any State error rates that were recalculated, upon a State's request, for informational purposes and to determine sample sizes for the next measurement cycle.

<sup>a</sup> HHS reported the results of the fiscal years 2008 through 2010 measurement cycles in its fiscal year 2011 agency financial report.

<sup>b</sup> The combined rate is a weighted average of fee-for-service and managed care, with the addition of eligibility. A small correction factor ensures that Medicaid eligibility errors do not get "double counted" if the sampled item was also tested in either the fee-for-service or managed care components.

**Question.** There have been multiple news reports regarding the trend of hospitals purchasing the practices of community oncologists. A beneficiary can still see the same doctor, in essentially the same doctor's office, and receive the same drug, yet still see his or her cost sharing requirement increase. And the amount Medicare pays increases too. Can you explain the how the mechanics of the different payment systems work as to produce this result?

**Answer.** When hospitals purchase physician practices, they can convert them to provider-based departments if certain criteria are met. Services performed at provider-based departments can be billed at hospital outpatient department rates, and, therefore, Medicare's total payment rates for certain services are higher after a practice has been converted to a provider-based department, despite the fact that the practice's location, the physicians who practice there, and the beneficiaries served could be the same as before the conversion occurred.

For example, when a beneficiary receives a mid-level office visit in a physician office, Medicare makes a single payment to the physician at Medicare's physician fee schedule non-facility rate, which is approximately \$73 in 2015. When the same service is provided in a hospital outpatient department, Medicare makes two payments—one payment at the physician fee schedule facility rate (\$51) and another payment to the hospital, typically at the hospital outpatient prospective payment system rate (\$96). Therefore, Medicare's total payment rate for a mid-level office visit is roughly double (\$73 vs. \$147) when performed in a hospital outpatient department versus a physician office in 2015. Because beneficiaries are responsible for a portion of the total payment rate, higher payment rates also increase costs for beneficiaries.

Many other services, such as imaging and surgical services, are also reimbursed at a higher rate by Medicare when performed in hospital outpatient departments versus other settings, such as physician offices and ambulatory surgical centers.

The Bipartisan Budget Act of 2015 partially addresses this issue. Specifically, services furnished by off-campus hospital outpatient departments—that is, outpatient departments that are not located on a hospital campus—are excluded from the hospital outpatient prospective payment system, effective January 1, 2017, and thus the total payment rate for such services will be the same as if the services had been performed in a physician office. However, this new provision does not apply to providers billing as hospital outpatient departments prior to enactment of the legislation or to services provided on a hospital campus.

**Question.** Is payment differential a driving factor for hospitals acquiring physician practices?

**Answer.** GAO currently has work underway that examines trends in hospital-physician consolidation and the extent to which higher levels of such consolidation were associated with more evaluation and management office visits being performed in hospital outpatient departments (HOPDs) instead of physician offices from 2007–2013. We anticipate issuing the report, which addresses this issue, in winter 2016 and will provide a copy to the committee at that time.

**Question.** Does CMS have authority to implement site neutral payments between the hospital outpatient department and the physician office settings without Congress enacting such legislation?

**Answer.** We anticipate issuing a report addressing this issue in winter 2016 and will provide a copy to you as soon as it is available.

**Question.** It has been reported that there has been an 82% increase in closures of community cancer practices since 2008. Despite the likelihood that these oncologists are now hospital-based, such a trend has an impact on cost of cancer care for the Medicare program and beneficiaries and may have an impact on access to cancer services. Has GAO examined the cost and access issues?

**Answer.** Although GAO has not directly examined cost and access issues related to increased closures of community cancer practices, as part of our recent report on

the 340B Drug Pricing Program,<sup>3</sup> we examined changes in the provision of outpatient cancer care at approximately 2,300 hospitals. The 340B Program requires drug manufacturers to sell most outpatient drugs at deeply discounted prices to certain healthcare entities, including certain hospitals. These entities benefit from lower outpatient drugs prices and may also benefit from the revenue generated when they are reimbursed by Medicare and other payers at rates that exceed the discounted prices the entities pay for the outpatient drugs. Because the 340B statute does not specify how entities, such as hospitals, should use the savings or any resulting revenue associated with the discounts, certain stakeholders have questioned whether hospitals' participation in the program might contribute to hospital acquisition of oncology practices. Some of these stakeholders—including groups representing independent oncology practices—contend that 340B hospitals are acquiring independent oncology practices, in part, to expand their outpatient base for 340B oncology drugs and thus generate higher revenue for these drugs.

In general, we found that the provision of hospital outpatient cancer care increased from 2008 to 2012 among the hospitals we studied. Specifically, our analysis focused on disproportionate share hospitals (DSH) because DSH hospitals account for the majority of drug purchases under the 340B Program. We compared these hospitals with non-340B DSH hospitals (hospitals that received DSH payments but did not participate in the 340B Program) and all other non-340B hospitals and examined changes over time between 2008 and 2012 in terms of: (1) the percentage of hospitals treating Medicare outpatient oncology beneficiaries and (2) the average number of Medicare outpatient oncology beneficiaries served. We found that the percentage of hospitals treating outpatient oncology beneficiaries increased among all three hospital groups between 2008 and 2012, but increased the most at 340B DSH hospitals (5 percent compared with 1 percent at non-340B DSH hospitals and 2 percent at other non-340B hospitals). Similarly, the average number of outpatient oncology beneficiaries served increased among all three hospital groups between 2008 and 2012, but increased the most at 340B DSH hospitals (45 percent compared with 34 percent at non-340B DSH hospitals and 28 percent at other non-340B hospitals).

*Question.* Improper payments are swelling, and according to the GAO, Medicare is a big contributor to that increase. A new bill, the Medicare Common Access Card Act S. 1871, introduced by Senator Mark Kirk, would pilot deployment of a modernized Medicare card with a secure smart chip, like the new financial services cards being rolled out today. The card would provide a way to verify Medicare beneficiaries are eligible for services, equipment or prescriptions. The secure card would subsequently support a secure electronic billing transaction from legitimate providers only to Medicare. In addition, the smart card would create an audit trail so that claims and payments can be electronically documented with ease. How could this type of electronic authentication and documentation add accountability to Medicare payments processes?

*Answer.* Medicare has a secure electronic billing system that provides documentation of the claims submission and payment process. Some health care providers have been submitting claims electronically since 1981, and by law Medicare has been prohibited from paying claims not submitted electronically since October 16, 2003, with limited exceptions. Additionally, Medicare has an electronic system in place for providers to inquire about the eligibility of a beneficiary and their benefits.

A Medicare card with a microprocessing chip could enhance the authentication of beneficiaries' and providers' presence at the point of care, which Medicare's current electronic billing system does not do. As we reported in March 2015, using electronically readable cards, such as smart cards, to authenticate beneficiary and provider presence at the point of care could curtail certain types of Medicare fraud, such as instances where a provider misuses a beneficiary's Medicare number to bill on their behalf without having ever seen or rendered care to the beneficiary.<sup>4</sup> Similarly, authenticating providers at the point of care could potentially limit fraud schemes in which individuals or companies misuse an unknowing provider's Medicare enrollment information to submit claims and divert stolen reimbursements. However, we also reported that using beneficiary cards for authentication at the point of care would have limited effect since CMS has stated that it would continue to pay claims

<sup>3</sup>GAO, *Medicare Part B Drugs: Action Needed to Reduce Financial Incentives to Prescribe 340B Drugs at Participating Hospitals*, GAO-15-442 (Washington, DC: June 5, 2015).

<sup>4</sup>GAO, *Medicare: Potential Uses of Electronically Readable Cards for Beneficiaries and Providers*, GAO-15-319 (Washington, DC: Mar. 25, 2015).

regardless of whether a card was used in order to maintain access to Medicare benefits. This is discussed in the following answer.

*Question.* Today there are technology solutions, like smart cards, that are well understood and used around the world to create accountability in payment systems. Every financial institution in the United States has now adopted secure smart card technology for its credit cards to enable high payments security.

The data demonstrate that whenever smart card programs have been implemented, fraud has decreased and efficiencies have dramatically increased. According to a recent GAO report published in March of this year, *Potential Uses of Electronically Readable Cards for Beneficiaries and Providers*, GAO-15-319, CMS told GAO that “Despite the potential to curtail certain types of Medicare fraud, using beneficiary cards for authentication at the point of care would have limited effect” since CMS has stated that “it would continue to pay claims regardless of whether a card was used.” So even though tools are available to prevent fraud and improper payments, it appears that CMS is not inclined to use them. What policy changes do you think would need to be made in order to add accountability to the Medicare payment system and incorporate beneficiary and provider authentication using secure smart cards? Would it make more sense to deploy secure Medicare smart cards to prevent improper payments? What would be the cost in deploying smart card technology?

*Answer.* If smart cards were used to authenticate beneficiaries and providers at the point of care, a number of policy and management changes would be needed. For instance, CMS would need to update its claims processing systems to verify that the cards were swiped at the point of care. CMS would also need to change its policy regarding the use of the beneficiary card. Currently, Medicare does not require beneficiaries to have their Medicare card in order to obtain Medicare-covered services. CMS told us that they would not want to limit beneficiaries’ access to care by instituting a policy where beneficiaries had to have their card at the point of care because there may be legitimate reasons why a card may not be present at the point of care, such as when providers or beneficiaries forget their card or during a medical emergency. In addition, CMS would need to change its card management processes, for instance to begin producing a Medicare card for providers, which it does not currently do. Also, CMS would likely have to create a process to re-issue cards when security features on a card expire.

Other than potentially reducing some improper payments associated with certain types of fraud, Medicare smart cards would not prevent the most common reasons for improper payments. The largest portion of Medicare’s improper payments, about 60 percent in 2014 according to CMS, is due to lack of sufficient documentation to support the services or supplies provided, which would not necessarily be affected by implementation of a smart card. The second most common reason for improper payments in Medicare, according to CMS, is lack of medical necessity for a service or supply. This would also not necessarily be affected by implementation of a smart card.

We did not estimate the cost of deploying smart card technology in our report. However, our report does note that the initial implementation of any new card system in Medicare could be a lengthy process because CMS would need time to implement a public key infrastructure system and update its claims processing system, and providers could face challenges updating their information technology systems to use the cards.

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#### QUESTIONS SUBMITTED BY HON. JOHNNY ISAKSON

*Question.* Currently, commercial third-party income verification services are contractually provided to CMS, assisting in its determination of consumer eligibility for Medicaid, advanced premium tax credits (APTCs) and other cost-sharing reductions to support the purchase of qualified health plans. However, due to inflexible data requirements by CMS, this existing and valuable tool is not being fully utilized at the Federal level. It is also not being promoted by CMS for use at the State-level. Both instances lead me to believe that there are opportunities within Medicaid and the broader FFM to reduce improper payments through the utilization of the most up-to-date and available employer-reported information at both the Federal and State-levels.

Why do you think CMS is not taking full advantage of currently available income verification tools as provided by third-parties to CMS?

Answer. We have not assessed CMS's use of commercial third-party income verification services. Accordingly, we are not aware of the extent to which CMS is taking advantage of such services and its rationale for doing so. In terms of consumer income information, in general, it would be optimal to use the most up-to-date income information available when verifying what consumers have provided in their applications for health coverage through Medicaid or qualified health plans.

When we assessed CMS's initiatives to ensure that Medicaid appropriately pays only after other liable third-party insurers have done so, we noted that CMS had taken steps to support States and publicize effective State practices, such as conducting data matches with outside sources of wage information.<sup>5</sup> However, as new strategies emerge over time, a robust ongoing effort to collect and share information about State initiatives would ensure that States—particularly any States that may not conduct data matches with private insurers—are aware of available data matching strategies and solutions to challenges States or Medicaid managed care plans may face in conducting third-party liability activities.

*Question.* Do you agree that CMS should verify consumer income for Medicaid and other benefit eligibility based on the most up-to-date income information?

Answer. Yes. Timely information is needed to appropriately determine Medicaid eligibility. Although States have the flexibility to use different sources of information and processes to verify eligibility factors, CMS guidelines call upon States to maximize automation and real-time adjudication of Medicaid applications through the use of electronic verification policies. The Patient Protection and Affordable Care Act (PPACA) required States to use third party sources of data to verify eligibility to the extent practicable. Consequently, States have had to make changes to their eligibility systems, including implementing electronic systems for eligibility determination and coordinating systems to share information.

The selected States we reviewed in our December 2014 report were largely able to verify applicant eligibility based on electronic data sources, such as the Federal data services hub.<sup>6</sup> Three States we reviewed used existing State sources to verify applicant eligibility instead of relying on the Federal data services hub. Officials from two States noted that their States rely primarily on the Federal data services hub for eligibility verification; however, they use State data sources for income verification instead because they believe these data are timelier. In one State, officials indicated that the State received approval for an alternative to the hub, and chose to rely on its existing link to SSA, as well as other sources for verification.

*Question.* In FY 2012 the Medicare Fee-For-Service improper payment rate was 8.5%. In FY 2013, it rose to 10.7%. In FY 2014, it rose again to 12.7%—which equates to a loss of \$46 billion that year alone—the highest level in history. This upward trend is concerning.

How can we do a better job of reclaiming the billions in taxpayer dollars wasted within the program each year?

Answer. According to OMB, agencies recovered over \$20 billion dollars through recapture audits and other methods for fiscal year 2014. HHS reported the highest amount of recovered funds, almost \$11 billion.

The Medicare Fee-for-Service program has a number of activities targeted to identifying and recouping improper payments. The Medicare Comprehensive Error Rate Testing (CERT) program conducts claims reviews on a random sample of FFS claims to determine the error rate in the program. If a specific claim is identified as having an error through CERT, CMS attempts to recoup any money paid to the Medicare provider in error. In addition to the CERT program, CMS has a number of contractors who conduct claim reviews for the purpose of identifying and recouping improper payments. The Medicare Recovery Audit program uses contractors to review claims on a postpayment basis to identify if claims were paid in error. CMS pays the recovery auditors a contingency fee based on the improper payments the recovery auditor helps collect. The Medicare Administrative Contractors, who generally process and pay Medicare claims, also conduct claims reviews, largely on a prepayment basis, to deny payment for potential improper payments. CMS also has a supplemental medical claims review contractor that reviews specific types of claims, at the direction of CMS, to identify improper payments.

<sup>5</sup>See GAO, *Medicaid: Additional Federal Action Needed to Further Improve Third-Party Liability Efforts*, GAO-15-208 (Washington, DC: Jan. 28, 2015).

<sup>6</sup>See GAO, *Medicaid: Federal Funds Aid Eligibility IT System Changes, but Implementation Challenges Persist*, GAO-15-169 (Washington, DC: Dec. 12, 2014).

## QUESTION SUBMITTED BY HON. DANIEL COATS

*Question.* How has the Affordable Care Act affected GAO in terms of staffing? Have you had to hire additional staff to conduct oversight of this program, and if so, how many?

*Answer.* GAO has not hired specifically for conducting work related to the Affordable Care Act, but instead drew on the expertise of our existing staff regarding health care programs, information technology, tax policy, contracting, and actuarial science, among others. We have allocated significant resources to reports evaluating the Act's programs since its passage in 2010, recognizing the size, complexity, and risk associated with its implementation, and the high level of interest that Congress has in overseeing these programs. For example, GAO issued 13 products in fiscal year 2014 assessing the implementation of the health insurance exchanges and the effects of the Affordable Care Act on health insurance availability and costs; GAO issued an additional 8 products on these topics in fiscal year 2015. While many of the reports were done at the request of congressional committees, the law also contained 10 separate reporting requirements for GAO.

While we used existing staff and expertise to produce these Affordable Care Act reports, we have experienced resource challenges over this time period that led us to decrease the number of our employees. This has required us to work closely with Congress to assure that our work aligns with the committees' highest priorities, and in some cases to delay work. Due to declining appropriations, from fiscal year 2010 through fiscal year 2013, our staff decreased by 14 percent—to the lowest level of staffing for GAO since 1935. With increased appropriations in fiscal years 2014 and 2015, we were able to hire and grow our staff to mitigate a portion of the losses. Our budget proposal for fiscal year 2016 suggested a 6 percent increase to our appropriation which would bring us to 3,055 full-time equivalent employees—exceeding our fiscal year 2012 level for the first time since fiscal year 2012.

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 QUESTIONS SUBMITTED BY HON. SHERROD BROWN

*Question.* In the past, your agency has specifically mentioned complexity as a challenge for Earned Income Tax Credit compliance. Can you walk members of this committee through the challenges a low-income filer would face in trying to claim this credit? Can you also outline proposals Congress should consider to simplify the requirements and ensure better compliance?

*Answer.* The major challenge facing low-income filers for the EITC is dealing with the complex rules for determining eligibility for the credit. For example, in order to qualify for the credit, a filer's child must meet certain age, residency, and relationship requirements. However, these relationships are not always clear when filers share responsibility for the child with parents, former spouses, and other relatives or caretakers.

We have work underway that will describe the impact of complexity on taxpayer burden and IRS's ability to administer the credit. As part of this engagement, we are reviewing the impact of selected changes to elements of the EITC on simplicity, efficiency and equity. We expect to complete this work in the spring of 2016 and will provide it to you as soon as it is available.

Additionally, to ensure better compliance, we have identified matters for congressional consideration or recommendations for executive action—such as accelerating W-2 deadlines, expanding math error authority and establishing requirements for paid tax return preparers. If effectively implemented, these measures could help reduce EITC improper payments as well as the tax gap.

*Question.* Each year, a large portion of low-income families turn to paid preparers or use tax preparation software for help filing their income taxes. For families claiming the Earned Income Tax Credit, this decision reduces their benefits as they end up paying a fee out of their tax return to cover the cost of paid assistance. Has GAO studied or is GAO aware of any studies that have determined what percentage of EITC credits are spent on paid preparers or tax preparation software each year? What steps can Congress take to ensure tax filers don't feel overly burdened by the tax filing process and don't feel obligated to seek outside help?

*Answer.* In August 2014, IRS reported that 68 percent of all tax returns claiming EITC in tax years 2006 and 2007 were prepared by tax preparers.

In the spring of 2014, we conducted a limited, undercover, nongeneralizable study of 19 paid tax preparers who completed returns, including 10 returns for a scenario filer who had several common tax issues, one of which was eligibility to claim EITC.<sup>7</sup> In 7 of the 10 cases, serious errors were made including 3 related to the EITC. Tax preparation fees for these 10 returns ranged from \$160 to \$408.

The requirements for claiming the EITC are complex; for example, each taxpayer's child must meet certain age, residency and relationship requirements. The Congress could take legislative action to redesign the program, including simplifying the Internal Revenue Code, to help reduce taxpayer burden and decrease their need to use tax preparers. As noted in our response to the question above, our ongoing work is examining the impact of selected changes to elements of the EITC on simplicity, efficiency, and equity. We expect to complete that review in the spring of 2016 and will provide a copy of the report to the committee when it is available.

*Question.* I am sure you are aware of the problems posed by payday loans. The Pew Charitable Trusts estimates that 12 million Americans use payday loans each year, spending an average of \$520 in interest to repeatedly borrow an average of \$375 in credit. The Consumer Financial Protection Bureau (CFPB) reports that consumers pay about \$7 billion in payday loan fees annually. Borrowers pay exorbitant fees despite the fact that the amounts borrowed are small and the durations of the loans are brief.

I have developed a proposal to use the EITC as an alternative to payday lending. I would like you and your staff to offer feedback to assist me in crafting this legislation. My proposal would work in a manner similar to Advanced EITC, workers sign up with their employers for the Early Refund EITC option and then request an advance payment from their employers. That advance would arrive in their paychecks. The employer's payment would be reimbursed as a credit when filing its tax returns. In the past, advanced EITC was plagued with problems—most importantly low uptake and a high error rate. The low uptake was driven by workers' concerns that they would owe money at the end of the year. This concern is addressed by limiting the size of the Early Refund EITC to \$500—well above the size of the typical payday loan. At the same time credits erroneously claimed can be recouped at the time of tax filing. Please provide me with feedback on how to design this proposal so it is administrable and effective.

*Answer.* Prior to its repeal in 2010, the Advance Earned Income Tax Credit (AEITC) allowed eligible taxpayers who elected an advance payment to receive a portion of the Earned Income Tax Credit (EITC) from their employer throughout the year with their regular pay, instead of receiving a lump sum refund or tax credit when filing their yearend Federal income tax return. However, as you noted in your question, the AEITC had problems, including a very high error rate.

Any new proposal would need to address issues we previously identified with the advance option to guard against fraud and improper payments.<sup>8</sup> For example, neither IRS nor the employer was required to confirm the eligibility of those who elected the AEITC before they received it. In our 2007 report we found that almost 40 percent (about 200,000 recipients) did not file the required tax returns so that IRS could reconcile the advance payments. In addition, of the remaining 60 percent who did file, two-thirds misrepresented the amount of AEITC they received—the majority not reporting any AEITC. Moreover, we found that use of the advance option was low—only about 3 percent of the EITC recipients potentially eligible for the advance received it in tax years 2002 through 2004. And of those that did use the advance option, about 75 percent of the recipients received \$500 or less per year.

The premium tax credit (PTC) under PPACA also has an advance option and has some requirements that could address compliance concerns previously associated with the AEITC. Specifically, eligibility is determined by the Marketplace prior to payment and individuals must file a tax return in order to receive the advance credit in future years. IRS developed a system to verify PTC claims using Marketplace data but experienced various challenges related to the availability of complete and accurate third party data in its first year—the 2015 filing season.<sup>9</sup> Therefore, it is

<sup>7</sup> GAO, *Paid Tax Return Preparers: In a Limited Study, Preparers Made Significant Errors*, GAO-14-467T (Washington, DC: Apr. 8, 2014).

<sup>8</sup> GAO, *Advance Earned Income Tax Credit: Low Use and Small Dollars Paid Impede IRS's Efforts to Reduce High Noncompliance*, GAO-07-1110 (Washington, DC: Aug. 10, 2007).

<sup>9</sup> GAO, *Patient Protection and Affordable Care Act: IRS Needs to Strengthen Oversight of Tax Provisions for Individuals*, GAO-15-540 (Washington, DC: July 29, 2015).

uncertain to what extent IRS will be able to ensure compliance with this new advance credit.

We would be happy to review and provide comments on your proposal to use the EITC as an alternative to payday lending, as well as brief you on our prior EITC and PTC work.

#### QUESTIONS SUBMITTED BY HON. MARK R. WARNER

*Question.* GAO's testimony indicated that full implementation of the Digital Accountability and Transparency Act of 2014 (DATA Act) would assist agencies in detecting and preventing improper payments. With regard to this aim, how does GAO recommend integrating the 57 new government-wide data reporting standards into existing spending-related reporting requirements?

*Answer.* As Treasury and OMB move forward with implementing the standardized definitions for the 57 government-wide data reporting standards, they should look for opportunities to link them to established financial accounting and reporting processes. Doing this will help ensure the consistency and comparability of the information reported and may also provide a means for determining data quality between financial information reported under the DATA Act and information contained in audited agency financial statements. For example, certain data elements used by agencies in reporting financial data in their audited Statement of Budgetary Resources may also be used to report agency budget data under the DATA Act. In addition, the DATA Act requires Treasury to include certain financial information similar to the information reported in the Schedule of Spending, which is included in agency annual financial reports, as required by OMB Circular No. A-136 (Financial Reporting Requirements). Leveraging established data standards used by agencies in preparing this unaudited schedule could be used to report certain information under the DATA Act.

*Question.* Beyond GAO's existing statutory requirements under the DATA Act, what type of feedback and oversight will GAO be able to provide during these critical early moments of DATA Act implementation?

*Answer.* The DATA Act requires GAO to issue reports in 2017, 2019, and 2021 assessing and comparing the quality of data submitted under the DATA Act as well as agency implementation and use of data standards. GAO is committed to assisting congressional oversight by being a continuing presence to monitor and assess OMB, Treasury, and Federal agencies' actions as data standards are developed and implemented, and to work with inspectors general to ensure an efficient and effective audit process is in place to help ensure data quality. Toward that end, I have testified on DATA Act implementation twice within the last year. We have made several recommendations for concrete steps OMB and Treasury can take to improve implementation of the act.<sup>10</sup> Specifically, OMB and Treasury can more effectively link financial spending data to programs, establish a clear data governance structure, and adopt policies and procedures to foster ongoing and effective dialogue with stakeholders. In responding to a draft of my statement, OMB staff and Treasury officials neither agreed nor disagreed with our recommendations. However, testifying before two subcommittees of the House Oversight and Government Reform Committee on July 29, 2015, OMB's Acting Deputy Director for Management and Controller stated that the agency planned to address the issue of identifying "programs" for the purposes of linking them to DATA Act reporting but that such efforts would likely not start until sometime in fiscal year 2016 and would not be completed until after May of 2017. Regarding our recommendation that they establish a clear data governance structure, in a whitepaper published on its DATA Act collaboration website in August 2015, OMB and Treasury stated their intent to establish in fiscal year 2016 a formal, long-term governance process and structure for future data standards maintenance.

We also have both recently issued and forthcoming reports examining different components of implementation of the act.<sup>11</sup> We plan to issue these forthcoming re-

<sup>10</sup>See GAO, *Federal Data Transparency: Effective Implementation of the DATA Act Would Help Address Government-wide Management Challenges and Improve Oversight*, GAO-15-241T (Washington, DC: Dec. 3, 2014) and GAO, *DATA Act: Progress Made in Initial Implementation but Challenges Must be Addressed as Efforts Proceed*, GAO-15-752T (Washington, DC: July 29, 2015).

<sup>11</sup>See GAO, *Federal Spending Accountability: Preserving Capabilities of Recovery Operations Center Could Help Sustain Oversight of Federal Expenditures*, GAO-15-814 (Washington, DC: Sept. 14, 2015). GAO work currently underway includes a review of OMB's and Treasury's de-



ports in winter and spring 2016 and will provide copies to the committee when they are available. In our September 2015 report on steps taken by Treasury to preserve capabilities of the Recovery Operations Center, we recommended that Treasury capitalize on the opportunity created by the DATA Act and reconsider whether certain assets could be worth transferring to its Do Not Pay program to assist in its mission to reduce improper payments and that they document this decision and what factors were considered in reaching it. In response to a draft of that report, Treasury officials agreed to consider additional knowledge transfers from the Recovery Operations Center to assist its efforts to reduce improper payments.

In addition to public reporting, as part of our strategy to constructively engage with the administration on DATA Act implementation, we have reviewed draft versions of data definitions as well as the technical schema that Treasury officials developed to standardize the way financial assistance, contract, and loan award data will be collected and reported under the DATA Act. We shared several concerns with OMB and Treasury officials, and they addressed some of these in subsequent versions of the data definitions and technical schema. We will continue to provide congressional and executive branch decision makers with information and recommendations, as appropriate, throughout the DATA Act implementation process.

*Question.* As Congress seeks to ensure that the Department of the Treasury and the Office of Management and Budget (OMB) fully implement the DATA Act, what additional areas of Congressional oversight would be most important? *(Please indicate three.)* What current barriers exist to full implementation?

*Answer.* Given the complexity and government-wide scale of the activities required by the DATA Act, full implementation will not occur without sustained commitment by the executive branch and continued oversight by Congress. As implementation of the DATA Act moves forward, there are several areas where the administration faces challenges and potential barriers. Four areas where additional Congressional oversight could be particularly important are (1) operationalization of data element definitions (*i.e.*, the specific changes to agency processes, policies and technology that will be required to effectively implement the definitions), (2) timely implementation of a clear data governance structure for developing and maintaining data standards that are consistent with leading practices, (3) defining what qualifies as a “program” for purposes of reporting Federal spending data under the DATA Act, and (4) adopting policies and procedures to foster ongoing and effective two-way dialogue with stakeholders.

- **Operationalization of data element definitions:** OMB and Treasury have yet to operationalize key data definitions and this may affect full and effective implementation of the DATA Act. On August 31, 2015, OMB and Treasury finalized data definitions for 57 data elements for reporting under the act. This was an important step in implementing the data standards provision of the act. However, much remains to be done to carry out the specific changes to agency processes, policies and technology that will be required to effectively implement these data definitions across government. GAO has an evaluation currently underway examining this and related issues.
- **Timely implementation of a clear data governance structure:** In July 2015, I testified that although OMB and Treasury have taken steps to establish an initial governance process for developing data standards, more effort was needed to build a data governance structure that not only addresses the initial development of the data standards but also provides a framework for adjudicating revisions, enforcing the standards, and maintaining the integrity of standards over time.<sup>12</sup> GAO recommended that OMB and Treasury establish a set of clear policies and processes for developing and maintaining data standards that are consistent with leading practices for data governance. In an August 31, 2015 white paper, OMB and Treasury stated their intent to address this recommendation by working in fiscal year 2016 to establish a formal, long-term governance process and structure for future data standards maintenance.
- **Definition of “program” for reporting Federal spending data:** In the same July 2015 testimony, the Comptroller General discussed a number of challenges related to executive branch efforts to identify and define Federal programs. Effective implementation of the DATA Act as well as the Government

velopment and implementation of government-wide financial data standards and the design and implementation of the pilot to reduce recipient reporting burden required under the act.

<sup>12</sup> GAO, *Data Act: Progress Made in Initial Implementation but Challenges Must be Addressed as Efforts Proceed*, GAO-15-752T (Washington, DC: July 29, 2015).

Performance and Results Act Modernization Act's (GPRAMA) program inventory provisions—especially the ability to crosswalk spending data to individual programs—could provide vital information to assist Federal decision makers. In addition, a comprehensive list of Federal programs along with related funding and performance information is critical for identifying potential fragmentation, overlap, or duplication among Federal programs or activities. Accordingly, we recommended that OMB accelerate efforts to determine how best to merge DATA Act purposes and requirements with the GPRAMA requirement to produce a Federal program inventory.

- **Fostering ongoing and effective two-way dialogue with stakeholders:** To ensure that interested parties' concerns are addressed as implementation efforts continue, OMB and Treasury need to build on existing efforts and put in place policies and procedures to foster ongoing and effective two-way dialogue with stakeholders including timely and substantive responses to feedback received on the Federal Spending Transparency website.

*Question.* A government-wide, anti-fraud data analytics platform could assist inspectors general in detecting waste and fraud. The DATA Act gave the Department of the Treasury the option of absorbing the existing Recovery Accountability and Transparency Board platform, and GAO examined Treasury's decision not to do so in its report "Preserving Capabilities of Recovery Operations Center Could Help Sustain Oversight of Federal Expenditures" (September 2015). In this report, GAO suggested that the Council of the Inspectors General for Integrity and Efficiency (CIGIE) could reconstitute some of these capabilities. How could Congress effectively facilitate the establishment of such an antifraud data analytics platform within CIGIE? How might such a platform differ from the existing and limited "Do Not Pay" initiative within the Treasury Department?

*Answer.* Congress may wish to consider directing CIGIE to develop a proposal to reconstitute the Recovery Operations Center's (ROC) analytic capabilities to help ensure Federal spending accountability. A legislative proposal that explicitly articulates the relative costs and benefits of developing an analytics center with a mission and capabilities similar to the ROC could help Congress decide whether to authorize and fund such an entity.

Given its close connection to the oversight community, and the research it has already undertaken pertaining to the ROC, CIGIE is the logical entity to develop that proposal. If it were to do so, CIGIE could identify and recommend the resources needed—particularly in terms of employees and technology—to establish a ROC-like entity under its auspices. A proposal might also outline the data-analytic services that the center could offer the inspector general community and the potential results those services might provide.

In addition, such a proposal could outline any additional authorities needed, such as the ability to handle law-enforcement-sensitive data, which Treasury noted was a barrier for Do Not Pay (DNP) to provide similar services to the ROC. That element of the proposal would help ensure such a new entity would effectively support the oversight community in matters related to law enforcement. By creating a legislative proposal, CIGIE could thus present Congress with the detailed information Congress would need to make an informed decision about the merits of creating a CIGIE-led data-analytics center.

Regarding differences between a capability similar to the ROC and Treasury's DNP initiative, as part of its mission DNP scrutinizes various data sources at the pre-award, prepayment, payment, and post-payment stages and analyzes them for indications of potential improper payments and fraud. DNP's primary tools for doing this include batch matching payment information to various excluded parties and other "bad-actor" lists, and conducting analysis on payment files to examine irregularities, such as duplicates or the same unique identifier associated with different names.

The ROC also used data-matching techniques to identify risk, but it generally applied this technique to issues other than payment data, such as assisting law-enforcement investigations to identify instances when several entities were collaborating to commit fraud. Treasury officials have noted that the DATA Act did not grant Treasury the same authorities that the Recovery Board had to support law-enforcement efforts.

*Question.* GAO's testimony highlighted the GPRA Modernization Act as one of the tools that will help reduce improper payments. However, GAO's report "Implementation of GPRA Modernization Act Has Yielded Mixed Progress in Addressing Press-

ing Governance Challenges” (September 30, 2015) showed that implementation of the Government Performance and Results Modernization Act of 2010 (GPRAMA) continues to be uneven. Since GPRAMA was enacted, GAO has made 69 recommendations to improve implementation; this report shows that 41 (85%) have not been implemented. How does GAO recommend Congress enhance oversight of GPRAMA, in particular with regard to these GAO recommendations? Is legislative action necessary in any area?

Answer. As part of our work examining aspects of GPRAMA implementation and its effects, we have identified a number of areas in which improvements are needed. Since GPRAMA’s enactment in January 2011, we have made a total of 69 recommendations to OMB and agencies aimed at improving its implementation. Of these, 55 (about 80 percent) have not yet been implemented. Most of our recommendations were directed to OMB, reflecting the agency’s central role in implementing the act. OMB has implemented just over one-third (14) of the 38 recommendations we made specifically to it. Agencies have yet to implement any of the 31 recommendations we have made to them, though we made most (23) of these recommendations in reports we have issued since July 2015.<sup>13</sup> As described in more detail below, there are several actions Congress could take that could draw attention to the issues raised in our findings and recommendations, enhance oversight of GPRAMA, and encourage a more results-oriented culture in the Federal Government.

Congress should focus on four areas that we highlighted in our September 2015 report on the implementation of GPRAMA: (1) using GPRAMA to address cross-cutting program and policy issues; (2) ensuring that performance information is useful and used by managers for decision-making; (3) linking individual and agency performance to results; and (4) clearly communicating reliable and complete financial and performance information and improving transparency.<sup>14</sup> We found that although some progress has been made in areas where GAO has made prior recommendations, OMB and agencies continue to face a range of long-standing challenges. For example, we reported that while OMB has increased its emphasis on governance of cross-agency priority goals, the executive branch needs to take additional actions to address crosscutting issues. These crosscutting issues are fundamental to addressing many of the areas that we have identified as high risk, or where fragmentation, overlap, and duplication exist.

GPRAMA also enhances requirements for agencies to consult with Congress. For example, agencies are to involve Congress when establishing or adjusting strategic plans, which include relevant government-wide and agency priority goals. Agencies recently established agency priority goals for fiscal years 2016 and 2017. Agencies’ consultations with Congress about these goals, and how progress will be determined, provide an opportunity to discuss goal status and emphasize the importance of GPRAMA implementation at individual agencies.

Finally, Congress could draw attention to the issues raised in our work through its oversight activities, such as setting oversight agendas, holding hearings, and meeting with agency officials. By doing this, Congress could send a message to agencies that it considers efforts to improve the Federal Government’s performance a priority.

*Question.* GAO has indicated that the Federal Government, and the Centers for Medicare and Medicaid Services (CMS) in particular, is unable to determine the full extent to which improper payments occur, and to prevent them. What additional information does CMS require, and what behavioral, regulatory, statutory, or other barriers prevent CMS from gathering this information? Does Congress need to grant CMS additional authority in this regard?

#### *Medicare*

Answer. CMS has a robust methodology to measure improper payments in the Medicare Fee-for-Service (FFS) program. Under the Comprehensive Error Rate Testing (CERT) program, a random sample of processed claims are selected and reviewed for errors. Any errors identified are categorized into five high-level reasons: medical necessity, insufficient documentation, no documentation, incorrect coding, and other. While the CERT program has measured the improper error rate in Medi-

<sup>13</sup>These recommendations and information on their statuses are described in more detail in GAO, *Managing for Results: Implementation of GPRA Modernization Act Has Yielded Mixed Progress in Addressing Pressing Governance Challenges*, GAO-15-819 (Washington, DC: Sept. 30, 2015).

<sup>14</sup>GAO-15-819.

care FFS for a number of years, the error rate continues to be high. The largest portion of Medicare's improper payments, about 60 percent in 2014, is due to lack of sufficient documentation to support the services or supplies provided. For instance, CMS attributes a large increase in this error category to the PPACA face-to-face visit requirement for home health that was implemented in April 2011. As a result, CMS is modifying its face-to-face requirement's documentation requirements. In regards to medical necessity, the CERT program identified many improper payments due to inpatient hospital incorrect status errors (*i.e.*, patient status errors). Patient status errors occur when the physician admits a Medicare beneficiary as inpatient when the medical record supports the provision of care in an outpatient or other non-hospital based setting. To address this issue, CMS has clarified and modified the policy regarding when an inpatient admission is generally appropriate for payment under Medicare Part A and how Medicare review contractors will assess inpatient hospital claims for payment purposes.

Over the years we have made a number of recommendations to CMS to lower improper payments. For example, we have recommended that CMS should review, and potentially update, its medically unnecessary edits (MUE). MUEs are automated controls in the payment system that compare the number of certain services billed against limits for the amount of services likely to be provided under normal medical practice to a beneficiary by the same provider on the same day—for example, no more than one of the same operation on each eye. To the extent that these are not evaluated more systematically, CMS may be missing an opportunity to achieve savings by revising some MUEs to correspond with more restrictive limits. CMS has reported to us that the agency continually monitors the MUEs, that each quarter it implements new MUEs, and that the Center for Program Integrity will be continually monitoring these edits. As of November 2015, we are awaiting documentation of these actions. Additionally, we have a forthcoming report on improper payments in the Medicare Advantage program, which is Medicare's private health plan program. We plan to issue this report in winter 2016 and will provide a copy to the committee at that time.

#### *Medicaid*

CMS has taken many important steps in recent years to help improve program integrity—including some in response to our recommendations—and we believe even more can be done in this area.

#### *Coordination To Minimize Duplication and Ensure Coverage*

In 2014, we found that the Federal Government and the States were not well positioned to identify improper payments made to—or by—managed care organizations.<sup>15</sup> While CMS has taken steps to improve oversight of Medicaid managed care, the lack of a comprehensive program integrity strategy for managed care leaves a growing portion of Medicaid funds at risk. In our view, CMS actions to require States to conduct audits of payments to and by managed care organizations, and to update guidance on Medicaid managed care program integrity practices and recoveries, are crucial to improving program integrity. In June 2015, the agency issued a proposed rule to revise program integrity policies, including policy measures that we have recommended.<sup>16</sup> We will continue to follow CMS's actions in this area.

#### *Identifying Cost-Effective Efforts*

Our work has highlighted the importance of focusing State and Federal resources on cost-effective efforts to identify improper payments. States' information systems are a key component of program integrity activities. Our work has shown that the effectiveness of States' information systems used for program integrity purposes is uncertain. We recommended that HHS require States to measure and report quantifiable benefits of program integrity systems when requesting Federal funds and to reflect their approach for doing so. HHS concurred with these recommendations and said it had taken recent steps to help ensure that States provide post-implementation data on quantifiable benefits. We will continue to monitor HHS's progress in this area.

<sup>15</sup> See GAO, *Medicaid Program Integrity: Increased Oversight Needed to Ensure Integrity of Growing Managed Care Expenditures*, GAO-14-341 (Washington, DC: May 19, 2014).

<sup>16</sup> Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, Medicaid and CHIP Comprehensive Quality Strategies, and Revisions Related to Third Party Liability; Proposed Rules, 80 Fed. Reg. 31,098 (proposed June 1, 2015).

*Ensuring Medicaid Remains a Payer of Last Resort*

CMS and the States must ensure that if Medicaid enrollees have another source of health care coverage, that source should pay, to the extent of its liability, before Medicaid does. In January 2015, we recommended that CMS play a more active leadership role in monitoring, supporting, and promoting State third-party liability efforts.<sup>17</sup> Specifically, we recommended that CMS:

1. Routinely monitor and share across all States information regarding key third-party liability efforts and challenges; and
2. Provide guidance to States on their oversight of third-party liability efforts conducted by Medicaid managed care plans.

In June 2015, CMS indicated it plans to issue guidance, which would require managed care plans to include information on third-party liability amounts in the encounter data submitted to States. We will continue to follow CMS's actions in this area.

*Efforts to Ensure Only Eligible Individuals and Providers Participate in Medicaid Can Be Improved*

Using 2011 data, we reported on indications of potentially fraudulent or improper payments related to certain Medicaid enrollees and paid to some providers, as shown in our review of approximately 9 million enrollees in four States.<sup>18</sup> While these cases indicate only potentially improper payments, they raise questions about the effectiveness of beneficiary and provider enrollment screening controls. In February 2011, CMS and HHS's Office of Inspector General issued regulations establishing a new risk-based screening process for providers with enhanced verification measures, such as unscheduled or unannounced site visits and fingerprint-based criminal background checks. If properly implemented by CMS, the Federal data services hub and the additional provider screening measures could help mitigate some of the potential improper payment issues that we identified. However, we identified gaps in State practices for identifying deceased enrollees, as well as State challenges in screening providers effectively and efficiently, and recommended that CMS provide guidance to States to better:

1. Identify enrollees who are deceased, and
2. Screen providers by using automated information available through Medicare's enrollment database.

HHS concurred with our recommendations and stated it would work with States to determine additional approaches to better identify deceased enrollees, and that it would continue to educate States about the availability of provider information and how to use that information to help screen Medicaid providers more effectively and efficiently. We will continue to monitor HHS's efforts in this area.

*Question.* GAO's testimony highlights the challenges of both filing for and administering the EITC, a credit that lawmakers on both sides of the aisle agree is a critical part of our tax code. EITC claims are twice as likely to be audited as other tax returns, but most EITC recipients cannot afford to hire someone to help them navigate an IRS audit. These are the same taxpayers who are likely to use an unregulated commercial tax return preparer when presented with the complexities of filing an EITC claim—and your testimony makes clear that these preparers are responsible for a large share of improper EITC payments. You also note in your testimony that the IRS has initiated several programs to address EITC improper payments, including outreach and education to taxpayers. Has the GAO looked into the effectiveness of these programs since inception, and will these programs be able to continue at these same levels under current IRS budget restrictions?

*Answer.* GAO has looked into the effectiveness of elements of the overall compliance effort. IRS has undertaken a number of compliance and enforcement activities to reduce EITC improper payments, and Treasury reported in its fiscal year 2014 agency financial report that it prevented an estimated \$3.5 billion in improper EITC payments in fiscal year 2014. However, Treasury also reported that estimated EITC improper payments were \$14.5 billion in 2013, \$17.7 billion in 2014, and \$15.6 billion in 2015.

<sup>17</sup> See GAO, *Medicaid: Additional Federal Action Needed to Further Improve Third-Party Liability Efforts*, GAO-15-208 (Washington, DC: Jan. 28, 2015).

<sup>18</sup> See GAO, *Medicaid: Additional Actions Needed to Help Improve Provider and Beneficiary Fraud Controls*, GAO-15-313 (Washington, DC: May 14, 2015).

Among other things, IRS uses audits to help identify EITC improper payments, and in June 2014, we reported that about 45 percent of correspondence audits (audits done by mail) that closed in fiscal year 2013 focused on EITC issues. IRS has reported that tax returns with EITC claims were twice as likely to be However, we found that the effectiveness of these audits may be limited because since 2011 there have been regular backlogs in the audits, which have resulted in delays in responding to taxpayer responses and inquiries.

We also found that unclear correspondence generated additional work for IRS, such as telephone calls to IRS examiners. These issues have imposed burdens on taxpayers and costs for IRS. IRS acknowledged these concerns and has initiated several programs to address EITC improper payments, such as increasing outreach and education to taxpayers and tax return preparers. We also noted that IRS has had to scale back its audit of individual tax returns by about 20 percent in recent years.<sup>19</sup> In addition to fewer audits, our most recent review of IRS's budget highlighted service reductions across several IRS offices and divisions.<sup>20</sup> We are reviewing how IRS monitors and assesses the effectiveness of EITC compliance efforts—which include a range of education, outreach and enforcement initiatives. As part of our review, we will determine whether the measures and methods IRS uses to assess the effectiveness of its compliance strategies are appropriate for that purpose. We plan to issue our report on this review in spring 2016 and will provide it to you as soon as it is available. We would also be happy to brief you on this work.

*Question.* For the past year, I have been examining the development and growth of contingent work and the on-demand economy, engaging with workers, CEOs of new peer-to-peer platforms and marketplaces, academics, and other experts. Some of these contingent workers, many of whom receive a Form 1099 for this compensation, are engaging with the tax system in new ways—paying self-employment tax, tracking their expenses, making quarterly tax payments, etc. Has GAO made recommendations on how to reduce tax complexity for these workers and at the same time decrease the level of improper payments?

*Answer.* Yes, we have made recommendations on tax compliance issues related to contingent workers or independent contractors—those who provide services to various types of employers in lieu of hiring employees.<sup>21</sup> When employers improperly classify workers as independent contractors instead of as employees, those workers do not receive protections and benefits to which they are entitled, and the employers may fail to pay some taxes they would otherwise be required to pay. Such misclassification can affect Federal and State programs, businesses, and those misclassified. It can reduce revenue that supports Social Security, Medicare, unemployment insurance, and workers' compensation. Further, businesses who misclassify workers to reduce their costs by not paying payroll taxes or providing benefits to workers can gain a competitive advantage over businesses that do not misclassify workers. IRS enforces worker classification compliance primarily through examinations of employers but also offers settlements through which eligible employers under examination can reduce taxes they might owe if they maintain proper classification of their workers in the future.

In our August 2009 report, we identified options to address misclassification.<sup>22</sup> Stakeholders we surveyed, including labor and employer groups, did not unanimously support or oppose any options. However, some options received more support, including enhancing coordination between Federal and State agencies, expanding outreach to workers on classification, and allowing employers who misclassify to enter an IRS program that induces them to correctly classify workers. IRS imple-

<sup>19</sup> GAO, *IRS 2015 Budget: Long-Term Strategy and Return on Investment Data Needed to Better Manage Budget Uncertainty and Set Priorities*, GAO-14-605 (Washington, DC: June 12, 2014).

<sup>20</sup> GAO, *IRS 2016 Budget: IRS Is Scaling Back Activities and Using Budget Flexibilities to Absorb Budget Cuts*, GAO-15-624 (Washington, DC: Jun. 24 2015).

<sup>21</sup> GAO, *Tax Gap: IRS Could Do More to Promote Compliance by Third Parties with Miscellaneous Income Reporting Requirements*, GAO-09-238 (Washington, DC: Jan. 28, 2009); *Tax Gap: A Strategy for Reducing the Gap Should Include Options for Addressing Sole Proprietor Non-compliance*, GAO-07-1014 (Washington, DC: July 13, 2007); *Tax Administration: Issues in Classifying Workers as Employees or Independent Contractors*, GAO/T-GGD-96-130 (Washington, DC: June 20, 1996); *Tax Administration: Estimates of the Tax Gap for Service Providers*, GAO/GGD-95-59 (Washington, DC: Dec. 28, 1994); *Tax Administration: Approaches for Improving Independent Contractor Compliance*, GAO/GGD-92-108 (Washington, DC: July 23, 1992); *Tax Administration: Information Returns Can Be Used to Identify Employers Who Misclassify Workers*, GAO/GGD-89-107 (Washington, DC: Sept. 25, 1989).

<sup>22</sup> GAO, *Employee Misclassification: Improved Coordination, Outreach, and Targeting Could Better Ensure Detection and Prevention*, GAO-09-717 (Washington, DC: Aug. 10, 2009).

mented our recommendations, including establishing a joint interagency effort with Federal and State agencies to address misclassification; offering education and outreach to workers on classification rules, implications and tax obligations; and creating a forum for regularly collaborating with States on data sharing issues.

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PREPARED STATEMENT OF HON. ORRIN G. HATCH,  
A U.S. SENATOR FROM UTAH

WASHINGTON—Senate Finance Committee Chairman Orrin Hatch (R-Utah) today delivered the following opening statement at a Committee hearing examining how improper payments, including overpayments and underpayments, plague the Federal bureaucracy and divert scarce resources away from vital programs.

The Federal Government spends roughly \$3.5 trillion every year. I'm going to repeat that number: \$3.5 trillion.

I think most reasonable people would agree that not all of that money is well spent. There is, of course, plenty of questionable spending that the government does on purpose on a more or less daily basis—but that's a whole other hearing. Today's hearing is about the spending the Federal Government does by accident.

All told, according to the Government Accountability Office, there were about \$125 billion of this kind of accidental—or improper—spending in the last fiscal year alone.

We talk about so much money here in Congress—millions, billions, and trillions of dollars. We casually cite dollar figures that are incomprehensible to most people. And, too often, politicians and policymakers talk about these dollars as if they are Washington's, as if the funds just materialized out of thin air for the sole purpose of being spent by the government.

But let's be clear about one thing: These funds—these millions, billions, and trillions of dollars that we talk about and sometimes spend rather haphazardly, belong to the taxpayers. These are dollars the Federal Government has either taken out of paychecks or borrowed from future taxpayers.

So, when we talk about losing billions of dollars, it's not Washington's dollars that has been lost. Instead, it is money that we've taken away from hardworking people and then squandered through improper oversight or plain old irresponsibility.

I hope we keep that in mind as we talk more about millions and billions here today.

Just think about what could be purchased with \$125 billion.

That amount would buy an iPad for every single American.

It would buy every person in the country a year's worth of meals at Chipotle.

Or, to put it another way, \$125 billion would be enough to pay for health insurance for every living person in Florida, our third most populous State.

According to the Congressional Budget Office, total tax revenues average out to about \$17,000 per American household. By that estimate, for over 7 million American families, who work hard to stay on budget, pay their bills on time—and, yes, pay their taxes—every single dollar they sent to Washington in the last fiscal year was wasted on improper payments.

Earlier this year, GAO issued a report entitled "Opportunities to Reduce Fragmentation, Overlap, Duplication, and Improper Payments and Achieve Other Financial Benefits." This report provided updates on the government's progress—or lack thereof—in addressing more than 440 actions previously recommended by GAO that were designed to cut waste in government spending programs and implement efficiencies in government services across 180 areas of concern identified in past annual reports.

While the GAO estimated that executive branch and congressional actions to reduce waste and abuse resulted in roughly \$20 billion in "financial benefits" between fiscal years 2011 and 2014, only 29 percent of GAO's recommendations were classified as "fully addressed" as of November of last year.

In other words, while some progress has been made to address these concerns, any successes we've seen have been overshadowed by a persistently growing mountain of waste, fraud, abuse, and mismanagement.

The problem is actually much worse than you might think.

According to GAO, in FY 2014, the estimated amount of government-wide improper payments increased by nearly 20 percent—that's \$19 billion—over the previous year, the largest increase we've seen in recent years. So, basically, this 1-year increase in improper payments essentially wiped out the \$20 billion in financial benefits accrued over a 4 year period from implemented recommendations.

While the payment errors were spread among 22 Federal agencies, last year's increase was primarily due to estimates for Medicare, Medicaid, and the Earned Income Tax Credit, which account for over 76 percent of all improper government payments.

Since all three of these programs fall under our committee's jurisdiction, I want to take a moment to examine them individually.

The Medicare program, which provides essential health coverage to elderly and disable beneficiaries, paid out nearly \$60 billion in improper payments in FY 2014. That's nearly half of all the improper payments across the entire government and roughly 10 percent of all paid Medicare benefits.

That's right, about one out of every ten dollars paid out of Medicare was paid in error. That is unacceptable.

Last year, Medicaid, our primary health safety net for poor and vulnerable Americans, paid out approximately \$17.5 billion in improper payments. Just to put that into context—the government paid more in improper Medicaid payments last year than it spends in a year for the ENTIRE Temporary Assistance for Needy Families (TANF) program, our country's main cash welfare program for the poor.

And, as you all know, the Earned Income Tax Credit, or EITC, provides a refundable tax credit to working taxpayers that can be as much as \$5,500 for an income-eligible family with two children. In FY 2014, the government paid out nearly \$18 billion in improper payments under the EITC. That's more than 27 percent—more than \$1 out of every \$4—of what we spent on the entire program.

Of course, we've known about the high rates of improper payments in all of these programs for years now. While these numbers—by their sheer size—are staggering, none of them should be surprising. This is a problem that has been many years in the making. And, if you ask me, the time for addressing it is long past due.

I think we're going to have an interesting and informative conversation about these issues today.

I want to thank the Comptroller General for being here today and for his agency's hard work in uncovering and addressing these issues. This committee greatly values GAO's insights and I look forward to hearing more about their recommendations today.

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PREPARED STATEMENT OF HON. RON WYDEN,  
A U.S. SENATOR FROM OREGON

It's important at the outset of this hearing to make sure that everyone is on the same page with respect to the topic at hand. In my view, there are two issues, which are related but distinct. The first is improper payments, which are payments that are too big, too small, or documented the wrong way. In most cases, it comes down to accounting errors or taxpayers getting tripped up by our complicated tax rules. The second issue is fraud, which is a criminal act that results in illegal payments.

Let me begin by saying that nobody on this side of the aisle backs down from the challenge of fixing improper payments and fighting fraud. That's because every taxpayer dollar lost to mistakes—no matter the cause—is a dollar that's not available to help seniors cover medical costs, put a student through college, or rebuild our aging infrastructure. Congress ought to do everything it can to eliminate fraud and improper payments. But by conflating the two, you run the risk of doing a bad job fighting both.

When it comes to cutting down on improper payments, there is action that can be taken. For example, the Finance Committee passed bipartisan legislation in June—the AFIRM Act—that can help Medicare cut down improper payments by shoring up the system of audits and appeals. The crushing backlog of appeals is a major source of frustration for seniors and providers, and the audit system in place today needs big improvements. Our legislation will help make sure that the right



payments are going out, and it will keep paperwork and bureaucratic red tape from coming between doctors and their patients.

When it comes to combating fraud, the Government Accountability Office and the National Taxpayer Advocate have said that one of the best ways to go after tax fraudsters is by protecting taxpayers from predatory and incompetent paid return preparers. When you look at the facts, setting standards for tax return preparers is the definition of a no-brainer. But at the Federal level, there are no standards whatsoever protecting taxpayers from incompetence and dishonesty among paid return preparers. Only four States have set their own standards.

As a result, across the country, incompetent preparers make mistakes that cause financial nightmares for a lot of families, particularly people of limited means. Or worse, unethical, fraudulent return preparers pose as trustworthy businessmen and steal money from people who already struggle to get by.

My home State of Oregon is one of four that gets this issue right and protects innocent people from these scofflaws. And it's not just me saying there should be nationwide protections—it's the GAO and the Taxpayer Advocate, which are the trusted nonpartisan voices on these issues. Senator Hatch and I have a proposal ready to go that would combat fraud in a number of ways, including by regulating paid tax return preparers, and I'm hopeful that the committee will move it forward soon.

As GAO points out in its testimony, setting standards for paid preparers will have a double benefit. Not only will it crack down on fraud, it will also help cut down on improper Earned Income Tax Credit payments. That's because nearly half of the tax returns done by paid preparers improperly claim the EITC.

Finally, you cannot get a full picture of how to protect taxpayer dollars without looking at a few other major issues. The first is the annual tax gap of \$385 billion, which is more than three times the total amount of improper payments government-wide. And second is defense spending. The Pentagon cannot get a free pass when it comes to improper payments just because some members of Congress find it easier to focus on health care and tax programs. Those issues have to be a part of the debate.

In closing, it's my view that the committee ought to look at this challenge of improper payments as an opportunity to make our tax system and spending programs work better. GAO has made a number of recommendations on how to make that happen. I look forward to hearing Mr. Dodaro's testimony.

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## COMMUNICATIONS

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October 7, 2015

The Honorable Orrin G. Hatch  
*Chairman*  
Committee on Finance  
U.S. Senate  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Ron Wyden  
*Ranking Member*  
Committee on Finance  
U.S. Senate  
219 Dirksen Senate Office Building  
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RE: Improper Payments in Federal Programs

Dear Chairman Hatch and Ranking Member Wyden:

The Academy of Managed Care Pharmacy (AMCP) hereby submits comments for the record on the hearing entitled: "Improper Payments in Federal Programs," held on October 1, 2015. AMCP believes that PDP sponsors can and should play an important role in fighting fraud, waste and abuse under the Medicare Part D program. Greater involvement by Prescription Drug Plan (PDP) sponsors will reduce the incidence of fraud under the Medicare program and result in substantial savings for Medicare beneficiaries and taxpayers.

AMCP is a national professional association of pharmacists and other health care practitioners who serve society by the application of sound medication management principles and strategies to improve health care for all. The Academy's more than 7,000 members develop and provide a diversified range of clinical, educational and business management services and strategies on behalf of the more than 200 million Americans covered by a managed care pharmacy benefit.

In 2014, according to a Government Accountability Office report, the federal government spent \$58 billion on Medicare Part D; an estimated \$1.9 billion of that total were attributed to improper prescription payments.<sup>1</sup> Federal and private-sector estimates of Medicare fraud range from 3 percent to as high as 10 percent of total expenditures, amounting to between \$68 billion and \$226 billion annually. The substantial size of the dollars lost annually in fraud, waste and abuse in the entire Medicare Program has made Medicare fraud a top priority.

As you know, if not remedied, fraud will continue to pose a significant threat to the integrity of the overall benefit. AMCP has developed draft legislation that we believe offers a solution to reduce improper payments in Medicare Part D. Our draft legislation, the "Medicare Prescription Drug Anti-Fraud Act," would authorize the Health and Human Services (HHS) Secretary to decrease improper prescription payments by approving the suspension of payments to a pharmacy or other supplier when the Secretary has determined that there is a credible allegation of fraud. This is the same authority currently used by the HHS Secretary under Section 6402 in the Patient Protection and Affordable Care Act (ACA) in Medicare Parts A and B.

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<sup>1</sup> Medicare Part D: Changes Needed to Improve CMS's Recovery Audit Program Operations and Contractor Oversight. Report to the Chairman, Subcommittee on Health, Committee on Ways and Means, House of Representatives, August 2015.

<http://www.gao.gov/assets/680/671997.pdf>. Accessed September 15, 2015.

State Medicaid programs are authorized to suspend payments pending an investigation of a credible allegation of fraud.

Currently, Prescription Drug Plan (PDP) sponsors may not suspend payments, in Medicare Part D, because of the prompt payment and any willing pharmacy contracting provisions. Instead PDP sponsors must “pay and then chase” claims that they have reason to believe are fraudulent. The Medicare Prescription Drug Anti-Fraud Act would amend Medicare Part D to add a new provision in section 1860D-12 of the Social Security Act which would include the following:

- PDP sponsors can report to the Secretary any credible allegation of fraud relating to pharmacy providers and suppliers furnishing items and services under the PDP.
- The Secretary shall consult with the Inspector General of HHS in determining whether there is a credible allegation of fraud.
- The process used to determine whether there is a credible allegation of fraud shall be similar to the process already established for purposes of administering Section 1862(o) of the Social Security Act.
- Allows the Secretary to authorize a PDP sponsor to suspend payments once the Secretary determines that a credible allegation of fraud is present pending an investigation, unless the Secretary determines there is a good cause not to suspend such payments.
- Allows the Secretary to suspend the prompt payment and any willing pharmacy provisions during the period of suspension.

In a time of diminishing budget resources, it is more important than ever that the Medicare program is effectively able to combat fraud. The Academy recognizes the seriousness of this problem and is supportive of efforts that would limit fraudulent activity. On behalf of AMCP and the profession of managed care pharmacy, we will continue to work with you and your staff on this pressing issue. For your reference, a copy of the proposed legislation is attached.

If you have any comments or questions, please do not hesitate to contact me, or AMCP’s Vice President of Government and Pharmacy Affairs, Mary Jo Carden, at 703-683-2603, or by email at mcarden@amcp.org.

Sincerely,

Edith A. Rosato, R.Ph., IOM  
Chief Executive Officer

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### “Medicare Prescription Drug Anti-Fraud Act of 2015”

[Discussion Draft]

114TH CONGRESS

1ST SESSION

S. \_\_\_\_\_

To amend title XVIII of the Social Security Act to permit prescription drug plan sponsors to withhold payments to pharmacies based on credible allegations of fraud, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

\_\_\_\_\_ introduced the following bill; which was read twice and referred to the Committee on: \_\_\_\_\_

## A BILL

To amend title XVIII of the Social Security Act to permit prescription drug plan sponsors to withhold payments to pharmacies based on credible allegations of fraud, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE.

This Act may be cited as the “Medicare Prescription Drug Anti-Fraud Act of 2015”.

### SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The Secretary of Health and Human Services may suspend payments to any Medicare fee-for-service provider pending an investigation of a credible allegation of fraud under section 1862(o) of the Social Security Act.

(2) States may suspend payments to any Medicaid provider pending an investigation of a credible allegation of fraud under section 1903(i)(2)(C) of the Social Security Act.

(3) Medicare prescription drug plan sponsors may not suspend payments to any pharmacy pending a credible allegation of fraud because of prompt payment and any willing pharmacy contracting requirements.

(4) Medicare prescription drug plan sponsors can and should play an important role in fighting fraud, waste and abuse under the Medicare prescription drug program under part D of title XVIII of the Social Security Act.

(5) Greater involvement of prescription drug plan sponsors will reduce the incidence of fraud under the Medicare program and result in savings for Medicare beneficiaries and taxpayers.

(b) PURPOSES.—The purpose of this Act is to reduce payments for fraudulent claims submitted under part D of the Medicare program under title XVIII of the Social Security Act by establishing procedures under which prescription drug plan sponsors may withhold payments to pharmacies based on credible allegations of fraud.

### SEC. 3. AUTHORIZATION OF MEDICARE PRESCRIPTION DRUG PLANS TO SUSPEND PAYMENTS BASED ON CREDIBLE ALLEGATIONS OF FRAUD.

(a) IN GENERAL.—Section 1860D–12(b)(4) of the Social Security Act (42 U.S.C. 1395w–112(b)(4)) is amended by adding at the end the following new subsection:

“(H) AUTHORIZATION OF PDP SPONSORS TO SUSPEND PAYMENTS BASED ON ALLEGATIONS OF FRAUD.—

“(i) IN GENERAL.—The Secretary shall establish procedures under which a PDP sponsor may report to the Secretary a credible allegation of fraud relating to a pharmacy or other supplier furnishing items and services under the PDP.

“(ii) CONSULTATION.—The procedures under clause (i) shall provide that the Secretary shall consult with the Inspector General of the Department of Health and Human Services in determining whether there is a credible allegation of fraud against a pharmacy or other supplier.

“(iii) AUTHORIZATION TO SUSPEND PAYMENTS.—If the Secretary determines there is a credible allegation of fraud, the Secretary may authorize the PDP sponsor to suspend payments to the pharmacy or other supplier pending an investigation of such allegation, unless the Secretary determines there is good cause not to suspend such payments.

“(iv) RELATION TO OTHER PAYMENT SUSPENSION AUTHORITIES.— In establishing procedures under this section, the Secretary shall consider the procedures established under sections 1862(o) and 1903(i)(2)(C).

“(v) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as limiting the authority of a PDP sponsor to conduct post-claim payment review.”

## (b) CONFORMING AMENDMENTS.—

(1) PROMPT PAYMENT REQUIREMENTS.—Section 1860D–12(b)(4)(A)(i) of the Social Security Act (42 U.S.C. 1395w–112(b)(4)(A)(i)) is amended by striking “Each contract” and inserting “Subject to subparagraph (H), each contract”.

(2) ANY WILLING PHARMACY REQUIREMENTS.—Section 1860D–4(b)(1)(A) of the Social Security Act (42 U.S.C. 1395w–104(b)(1)(A)) is amended by striking “A prescription drug plan” and inserting “Subject to section 1860D–12(b)(4)(H), a prescription drug plan”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning on or after January 1, 2017.

## 340B HEALTH

The affordable prescription for healthy communities

United States Senate Committee on Finance  
Hearing on Improper Payments in Federal Programs

October 1, 2015

On behalf of over 1,000 member hospitals and health systems that participate in the 340B drug discount program, 340B Health appreciates the opportunity to submit this statement to the United States Committee on Finance. Specifically, we would like to address comments made about a recent Government Accountability Office (GAO) report during the hearing on Improper Payments in Federal Programs.

340B Health commends the GAO for acknowledging 340B hospitals play a critical role in treating low-income and vulnerable patients in their 2015 report, *Medicare Part B Drugs: Action Needed to Reduce Financial Incentives to Prescribe 340B Drugs at Participating Hospitals*. The GAO’s finding, which states 340B hospitals, “provide more uncompensated and charity care than non-340B hospitals,” is consistent with a recent Dobson Davanzo study that found 340B hospitals accounted for one-third of hospitals but provided 60 percent of uncompensated care.

Our organization remains concerned with the GAO’s conclusion regarding Medicare Part B spending. The GAO found that per beneficiary Medicare Part B drug spending was more than twice as high at 340B DSH hospitals than at non-340B hospitals. When questioned about this conclusion, Comptroller Gene Dodaro stated the GAO stands by its report and called upon Congress to take legislative action.

340B Health strongly believes there is insufficient data in the report to justify this conclusion. The Department of Health and Human Services (HHS) expressed similar concerns in comments submitted to the GAO, stating that the report’s conclusion on Part B drug spending “is not supported by the study methodology.” HHS also noted that GAO “did not examine any patient differences in terms of outcomes or quality.” We agree that the report did not sufficiently evaluate the causes behind the increased spending, such as treatment of more complicated cancer patients, nor did it evaluate whether higher spending has an impact on patient outcomes. 340B hospitals tend to treat sicker, more complex cancer patients with socioeconomic challenges and the report under-predicts the cost of the sickest beneficiaries.

These findings deserve additional exploration. It would be premature for Congress to legislate at this time absent additional research looking at what is causing the reportedly higher spending and how health outcomes are affected. We encourage policymakers to work with 340B stakeholders on this issue to better understand the underlying basis for these results and ensure that changes are not made that would undermine this vital program.

Below is 340B Health’s detailed analysis of the report’s key findings on Medicare Part B spending.

#### Analysis of Medicare Part B Spending

(1) The 340B hospital group in GAO’s analysis is not comparable to the non-340B hospital group, suggesting that differences in spending on Part B drugs could be explained by different hospital characteristics among the two groups.

- Our review of hospital data found that the 340B hospital group used in the GAO analysis excluded a significant number of smaller, non-teaching 340B hospitals because they were not in the program in 2008 or because they were

in the program in 2008 and not in 2012. Excluding these hospitals from the analysis caused the 340B hospital group to include more large, teaching hospitals than were included in the non-340B hospital group. Although the GAO attempted to control for size of hospital and teaching hospital status, its analysis did not evaluate whether the larger teaching hospitals provide different types of services than other hospitals that could explain higher spending. This difference in hospital characteristics between the two groups could have had a meaningful impact on the spending averages calculated for each hospital category.

- The 340B hospital group also included many more hospitals that are likely to focus on treating patients with cancer, compared to the non-340B hospital group. 340B hospitals may be more likely to specialize in cancer care compared to non-340B hospitals considering that 70 percent of National Cancer Institute (NCI)-designated cancer care centers are affiliated with 340B DSH hospitals, the vast majority of which were in the program in 2008 and 2012. Although the GAO attempted to control for treatment of cancer patients, its analysis did not evaluate the severity and complexity of cancer patients treated by 340B hospitals. Inclusion in the analysis of such a large number of hospitals with special accreditation for cancer care could, therefore, also skew the findings and result in higher average spending for 340B hospitals.
- (2) The differences in spending may be due to patient health status, because the model GAO used understates the severity of the health status of 340B DSH hospital patients, especially cancer patients.
- We are not aware of any research that suggests that the CMS-HCC predicts spending on Part B drugs or on oncology drugs. In fact, the measure has been specifically criticized for not accurately capturing cancer patients' health status and researchers have informed CMS of the need to refine the HCC model in order to improve the predictive accuracy for high-cost beneficiaries for whom the model under-predicts expenditures. This fact undermines the GAO's conclusion that the HCC model is an appropriate measure for the health status of a population with high rates of cancer. In light of these criticisms, the CMS-HCC model seems particularly likely to understate the true severity of the health status seen by the 340B DSH hospitals in the GAO analysis, since, as discussed above, they are larger than the hospitals in non-340B hospital groups and more likely to treat cancer patients. These limitations, combined with the fact that the GAO's analysis showed that the risk score for outpatient oncology patients at 340B DSH hospitals was 8.5 percent higher than for non-340B DSH hospitals may, in fact, account for the differences in spending that GAO found.
- (3) Additional data calls into question whether the 340B program's financial benefit causes increased spending.
- Despite concluding that 340B DSH hospitals had higher per beneficiary spending on Part B drugs, the GAO found that 340B DSH hospitals had lower outpatient Medicare margins than non-340B hospitals. Different margins may suggest that 340B hospitals provide a different mix of services compared to non-340B hospitals, which could explain why Medicare spending might differ at 340B hospitals. Moreover, the amount that 340B hospitals save by administering 340B drugs to Medicare Part B patients represents a fraction of total Medicare revenue (1.1 percent) and a fraction of the other types of Medicare payments that the GAO cites to in its report (*e.g.*, IME and DSH payments), also calling into question whether the 340B program's financial benefit causes increased spending.
- (4) Even if there is higher per beneficiary Medicare spending at 340B DSH hospitals, the GAO analysis does not review patient outcomes or otherwise evaluate the actual impact on quality of care and cost, which could be significant.
- Research suggests that 340B DSH hospitals may be improving health outcomes for Part B oncology beneficiaries in ways that justify the cost. Seventy percent of NCI-designated cancer centers are affiliated with DSH hospitals and a patient's receipt of care in an NCI designated comprehensive cancer center is correlated with a 37 percent decrease in the likelihood that the patient will die within 30 days of admission. Further, there is evidence that patients in NCI cancer centers are more likely to be treated with chemotherapy at higher dose intensities compared to patients at non-NCI centers.

Given the limitations of GAO's analysis, more study is needed before concluding that the 340B drug pricing program provides an incentive to prescribe more drugs or more expensive drugs than are necessary. In the 20 years that this organization has worked with 340B DSH hospitals, we have never had any indication that hospitals make patient care decisions to maximize 340B savings. Indeed, hospitals do not prescribe any medication, as all prescribing decisions are made by licensed health professionals according to standards set by their professions. The well-being of hospital patients is the number one goal of 340B Health member hospitals. Nevertheless, we remain concerned about the GAO's findings and intend to further analyze these issues in more depth.

