There was no objection.

GOVERNMENT WASTE CORRECTIONS ACT OF 1999

Mr. HORN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1827) to improve the economy and efficiency of Government operations by requiring the use of recovery audits by Federal agencies, as amended.

The Clerk read as follows:

H.R. 1827

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 “Government Waste Corrections Act of 1999”.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds the following:

(1) Overpayments are a serious problem for Federal agencies, given the magnitude and complexity of Federal operations and documented widespread financial management weaknesses. Federal agency overpayments waste tax dollars and detract from the efficiency and effectiveness of Federal operations by diverting resources from their intended uses.

(2) In private industry, overpayments to providers of goods and services occur for a variety of reasons, including duplicate payments, pricing errors, and missed cash discounts, rebates, or other allowances. The identification and recovery of such overpayments, commonly referred to as “recovery auditing and activity”, is an established practice with demonstrated large financial returns. On average, recovery auditing and activity in the private sector identify overpayment rates of 0.1 percent of purchases audited and result in the recovery of $1,000,000,000 for each $1,000,000,000,000 of purchases.

(3) Recovery auditing and recovery activity already have been employed successfully in limited areas of Federal activity. They have great potential for expansion to many other areas of Federal activities, including those by resulting in the recovery of substantial amounts of overpayments annually. Limited recovery audits conducted by private contractors under contract with the Department of Defense have identified errors averaging 0.4 percent of Federal payments audited, or $4,000,000 for every $1,000,000,000 of payments. If fully implemented within the Federal Government, recovery auditing and recovery activity have the potential to recover billions of dollars in Federal overpayments annually.

(b) PURPOSES.—The purposes of this Act are the following:

(1) To ensure that overpayments made by the Federal Government that would otherwise remain undetected are identified and recovered.

(2) To require the use of recovery audit and recovery activity by Federal agencies.

(3) To provide incentives and resources to improve Federal management practices with the goal of significantly reducing Federal overpayment rates and other waste and error in Federal programs.

SEC. 3. ESTABLISHMENT OF RECOVERY AUDIT REQUIREMENT

(a) ESTABLISHMENT OF REQUIREMENT.—Chapter 35 of title 31, United States Code, is amended by adding at the end the following:

“SUBCHAPTER—RECOVERY AUDITS

§3561. Definitions

“In this subchapter, the following definitions apply:

“(1) DIRECTOR.—The term ‘Director’ means the Director of the Office of Management and Budget.

“(2) DISCLOSE.—The term ‘disclose’ means to release, publish, transfer, provide access to, or otherwise allow a contractor to identify any information that is unique or individually identifiable information.

“(3) INDIVIDUALLY IDENTIFIABLE INFORMATION.—The term ‘individually identifiable information’ means any information, whether oral or recorded in any form or medium, that identifies or could reasonably be expected to identify a contractor or an individual.

“(4) OVERSIGHT.—The term ‘oversight’ means activities by a Federal, State, or local governmental entity, or by another entity acting on behalf of such a governmental entity, to enforce laws relating to, investigate, or regulate payment activities, recovery activities, and recovery audit activities.

“(5) PAYMENT ACTIVITY.—The term ‘payment activity’ means an activity that entails making payments to vendors or other nongovernmental entities that provide property or services for the direct benefit and use of an executive agency.

“(6) RECOVERY AUDIT.—The term ‘recovery audit’ means a financial management technique used to identify overpayments made by executive agencies with respect to vendors and other entities in connection with a payment activity, including overpayments that result from any of the following:

“(A) Duplicate payments.

“(B) Pricing errors.

“(C) Failure to provide applicable discounts, rebates, or other allowances.

“(D) Inadvertent errors.

“(7) RECOVERY ACTIVITY.—The term ‘recovery activity’ means activity authorized by law, including chapter 37 of this title, to attempt to collect an identified overpayment.

“(A) within 180 days after the date the overpayment is identified; and

“(B) through established professional practices.

§3562. Recovery audit requirement

“(a) IN GENERAL.—Except as exempted by the Director under section 3565(d) of this title, the head of each executive agency—

“(1) shall conduct for each fiscal year recovery audits and recovery activity with respect to payment activities of the agency if such payment activities for the fiscal year total $500,000,000 or more (adjusted by the Director annually for inflation); and

“(2) may conduct for any fiscal year recovery audits and recovery activity with respect to payment activities of the agency if such payment activities for the fiscal year total less than $500,000,000 (adjusted by the Director annually for inflation).

“(b) PROCEDURES.—In conducting recovery audits and recovery activity under this section, the head of each executive agency—

“(1) shall consult and coordinate with the Chief Financial Officer and the Inspector General of the agency;

“(2) shall implement this section in a manner designed to ensure the greatest financial benefit to the Government;

“(3) may conduct recovery audits and recovery activity in accordance with the standards issued by the Director under section 3565(b)(2) of this title, or by procuring performance of recovery audits, or by any combination thereof;

“(4) shall ensure that such recovery audits and recovery activity are carried out consistent with the standards issued by the Director and section 3565(b)(2) of this subchapter.

“(c) SCOPE OF AUDITS.—(1) Each recovery audit of a payment activity under this section shall cover payment activity in a fiscal year, except that the first recovery audit of a payment activity shall cover payment made during the 2 consecutive fiscal years preceding the date of the enactment of the Government Waste Corrections Act of 1999.

“(2) The head of an executive agency may conduct additional recovery audit activities for additional preceding fiscal years if determined by the agency head to be practical and cost-effective.

“(d) CONTRACTS.—

“(1) AUTHORITY TO USE CONTINGENCY CONTRACTS.—Notwithstanding section 3302(b) of this title, as consideration for performance of any recovery audit procured by an executive agency, the executive agency, the executive agency may pay the contractor an amount equal to a percentage of the total amount collected by the United States as a result of overpayments identified by the contractor in the audit.

“(2) FUNCTIONS OF CONTRACTOR.—(A) In addition to performance of a recovery audit, a contract for such performance may authorize the contractor subject to subparagraph (B) to—

“(i) notify any person of possible overpayments made to the person and identified in the recovery audit under the contract; and

“(ii) respond to questions concerning such overpayments.

“(B) A contract for performance of a recovery audit shall not authorize the head of an executive agency under this subchapter to authorize a contractor with an executive agency to report information concerning overpayments identified by such recovery audit.

“(3) LIMITATION ON AUTHORITY.—Nothing in this subchapter shall be construed to authorize a contractor with an executive agency to report information concerning overpayments identified by such recovery audit.

“(4) REQUIRED CONTRACT TERMS AND CONDITIONS.—The head of an executive agency shall include in each contract for procurement of performance of a recovery audit requirements that the contractor shall—

“(A) protect from disclosure otherwise confidential business information and financial information;

“(B) provide to the head of the executive agency and the Inspector General of the executive agency periodic reports on conditions giving rise to overpayments identified by the contractor and any recommendations on how to mitigate such conditions;

“(C) notify the head of the executive agency and the agency of any overpayments identified by the contractor; and

“(D) promptly notify the head of the executive agency or another executive agency that are beyond the scope of the contract; and

“(E) issue periodic reports to the executive agency shall include in each report for procurement of performance of a recovery audit requirements that the contractor shall—

“(i) provide to the head of the executive agency and the Inspector General of the executive agency periodic reports on conditions giving rise to overpayments identified by the contractor and any recommendations on how to mitigate such conditions;

“(ii) notify the head of the executive agency and any other executive agency of any overpayments identified by the contractor; and

“(iii) issue periodic reports to the head of the executive agency that are beyond the scope of the contract; and

“(iii) issue periodic reports to the head of the executive agency through the appropriate chain of command.

“(4) EXECUTIVE AGENCY ACTION FOLLOWING NOTIFICATION.—The head of an executive agency...
agency shall take prompt and appropriate action to notify a contractor pursuant to the requirements under paragraph (4) including forwarding to other executive agencies any information that applies to, or would not be cost-effective to, the contractor.

“(6) CONTRACTING REQUIREMENTS.—Prior to contracting for any recovery audit, head of an executive agency shall conduct a public-private cost comparison process. The outcome of the cost comparison process shall determine whether the recovery audit is performed in-house or by a contractor.

“(e) Rules.—Nothing in this subchapter shall be construed as diminishing the authority of any Inspector General, including such authority under the Inspector General Act of 1978.

“(f) PRIVACY PROTECTIONS.—

“(1) LIMITATION ON DISCLOSURE OF INDIVIDUALLY IDENTIFIABLE INFORMATION.—(A) Any non-governmental entity that obtains individually identifiable information through performance of recovery auditing or recovery activity under this chapter may disclose that information, in whole or in part, for the purpose of such auditing or activity, respectively, and oversight of such auditing or activity, unless otherwise authorized by the individual that is the subject of the information.

“(B) Any person that violates subparagraph (A) shall be liable for any damages (including non-pecuniary damages, costs, and attorney fees) caused by the violation.

“(2) DESTRUCTION OR RETURN OF INFORMATION.—Upon the conclusion of the matter or non-governmental entity, the non-governmental entity shall either destroy the individually identifiable information or return it to the person from whom it was obtained, unless another applicable law requires retention of the information.

“(3) 3563. Disposition of amounts collected

“(a) IN GENERAL.—Notwithstanding section 3302(b) of this title, the amounts collected annually by the United States as a result of any recovery audit or recovery activity under this subchapter shall be treated in accordance with this section.

“(b) USE FOR RECOVERY AUDIT COSTS.—Amounts referred to in subsection (a) shall be available to the executive agency—

“(1) to pay amounts owed to any contractor for performance of the audit; and

“(2) to reimburse any applicable appropriation for other recovery audit costs incurred by the executive agency with respect to the audit.

“(c) USE FOR MANAGEMENT IMPROVEMENT PROGRAM.—Of the amount referred to in subsection (a), there shall be deposited into the Treasury as miscellaneous receipts a sum equal to—

“(1) 50 percent of such amount; plus

“(2) amounts as remain after the application of subsections (b) and (c).

“(d) LIMITATION ON APPLICATION.—

“(1) IN GENERAL.—The Director may exempt an executive agency, in whole or in part, from the requirement to conduct recovery audits and recovery activity to the extent that such application would be inconsistent with another provision of law that authorizes credit of the amounts in a non-appropriated fund instrumentality, revolving fund, working capital fund, trust fund, or other fund or account.

“(2) SUBSECTIONS (c) AND (d).—Subsections (c) and (d) shall not apply to amounts collected through recovery audits and recovery activity, to the extent that such amounts are derived from the appropriation for an amount that remains available for obligation at the time the amounts are collected.

“(3) 3564. Management improvement program

“(a) CONDUCT OF PROGRAM.—

“(1) REQUIRED PROGRAMS.—The head of each executive agency that is required to conduct recovery audits under section 3562 of this title shall conduct a management improvement program under this section, consistent with guidelines prescribed by the Director.

“(2) DISCRETIONARY PROGRAMS.—The head of any other executive agency that conducts recovery audits under section 3562 of this title shall conduct a management improvement program under this section, the standards issued by the Director under section 3565(b)(2) may conduct a management improvement program under this section.

“(b) PROGRAM FEATURES.—In conducting the program, the head of the executive agency—

“(1) shall, as the first priority of the program, address problems that contribute directly to agency overpayments; and

“(2) may seek to reduce errors and waste in other executive agencies and operations by improving the executive agency’s staff capacity, information technology, and financial management.

“(c) INFORMATION WITH OTHER ACTIVITIES.—

“(1) subject to paragraph (2), may integrate the program under this section, in whole or in part, with other management improvement programs and activities of that agency or other executive agencies; and

“(2) shall notify the head of the executive agency to whom it was obtained, unless another applicable law requires retention of the information.

“(d) 3565. Responsibilities of the Office of Management and Budget

“(a) IN GENERAL.—The Director shall coordinate and oversee the implementation of this subchapter.

“(b) GUIDANCE.—

“(1) IN GENERAL.—The Director, in consultation with the Chief Financial Officers Council and the President’s Council on Integrity and Efficiency, shall issue guidance and provide support to agencies in implementing this subchapter. The Director shall issue initial guidance not later than 180 days after the date of enactment of the Government Waste Corrections Act of 1999.

“(2) REQUIREMENTS.—The Director shall include in the initial guidance under this subsection standards for the performance of recovery audits under this subchapter and the requirements applicable to contracts with the Comptroller General of the United States and private sector experts on recovery audits.

“(c) FEES LIMITATIONS.—The Director may limit the percentage amounts that may be paid to contractors under section 3562(d)(1) of this title.

“(d) EXEMPTIONS.—

“(1) IN GENERAL.—The Director may exempt an executive agency, in whole or in part, from the requirement to conduct recovery audits and recovery activity under section 3562(a)(1) of this title if the Director determines that compliance with such requirement—

“(A) would impede the agency’s mission; or

“(B) would not be cost-effective to the agency.

“(2) REPORT TO CONGRESS.—The Director shall promptly report the basis of any determination and exemption under paragraph (1) to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate.

“(e) REPORTS.—

“(1) IN GENERAL.—Not later than 1 year after the date of the enactment of the Government Waste Corrections Act of 1999, and annually for each of the 2 years thereafter, the Director shall submit a report on implementation of the subchapter to the President, the Committee on Government Reform of the House of Representatives, the Committee on Government Affairs of the Senate, and the Committee on Appropriations of the House of Representatives and of the Senate.

“(2) CONTENTS.—Each report shall include—

“(A) a general description and evaluation of the steps taken by executive agencies to conduct recovery audits, including an inventory of the programs and activities of each executive agency that are subject to recovery audits;

“(B) an assessment of the benefits of recovery auditing and recovery activity, including amounts identified and recovered (including by administrative setoff);

“(C) an identification of best practices that could be applied to future recovery audits and recovery activity;

“(D) an identification of any significant problems or barriers to more effective recovery audits and recovery activity;

“(E) a description of executive agency expenditures in the recovery audit process.

“(f) A description of executive agency management improvement programs under section 3564 of this title; and

“(g) any recommendations for changes in executive agency practices or law or other improvements that the Director believes would enhance the effectiveness of executive agency recovery auditing.

“(h) 3566. General Accounting Office reports

Not later than 60 days after issuance of each report required under section 3564 of this title, the Comptroller General of the United States shall submit a report on the implementation of this subchapter to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on Appropriations of the House of Representatives and of the Senate, and the Director.

“(b) APPLICATION TO ALL EXECUTIVE AGENCIES.—Section 3561 of title 31, United States code, is amended by inserting ‘‘and subsection VI of this chapter’’ after ‘‘section 3513’’.

“(c) DEADLINE FOR INITIATION OF RECOVERY AUDITS.—The need of each executive agency shall be determined in the first recovery audit under section 3562(a)(1) title 31, United States Code, as amended by this section, for each payment activity referred to in those sections by not later than 18 months after the date of the enactment of this Act.

“(d) CEREMONIAL AMENDMENT.—The analysis at the beginning of chapter 33 of title 31, United States Code, is amended by adding at the end the following:

‘‘SUBCHAPTER VI—RECOVERY AUDITS

‘‘3561. Definitions.’’
Mr. HORN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 1827, the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. HORN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 1827 would require executive branch departments and agencies to use a process called recovery auditing to review Federal pay- ment transactions in order to identify erroneous overpayments.

H.R. 1827, the Government Waste Corrections Act, which was introduced by the gentleman from Indiana (Mr. BURTON), the chairman of the full Committee on Government Reform; and he was joined in that by the majority leader, the gentleman from Texas (Mr. ARMED) and the gentleman from California (Mr. OSE), who is an active member of the Subcommittee on Government Management, Information and Technology, which I chair.

This act represents a milestone in the effort to reduce widespread fraud, waste and error in Federal programs that cost taxpayers billions of dollars every year. At a Committee on Government Reform hearing on government waste and mismanagement last February, Inspectors General from the Department of Health and Human Services, Housing and Urban Development, and Agriculture testified about their major program and management problems. One of the more serious problems they identified was that of erroneous payments.

It is estimated that a total of about $15 billion was erroneously paid out of Medicare, food stamps and housing programs in 1 year alone. Close to $33 billion of that was in the Medicare program. How much of this is due to fraud versus human or technical error is unknown at this point.

In addition, on March 31, 1999, the subcommittee I chaired examined the government-wide consolidated financial statement for fiscal year 1998. The General Accounting Office, which is part of the legislative branch and does both programmatic and fiscal auditing, found that among the most serious errors of waste were the billions of dol-
billion of dollars, the greater the likelihood of overpayments. This legislation addresses this problem by requiring Federal agencies to use a financial management tool that is called recovery auditing.

Recovery auditing is used to identify overpayments due to financial system weaknesses, problems with funda-mental accounting and financial reporting, incomplete documentation, and other weaknesses in a financial accounting system. It has been used very successfully by the automobile, retail, and food services industries in our country for more than 30 years. It is currently employed by the majority of the Fortune 500 companies. However, only a very few Federal agencies have utilized the process.

One agency that has used recovery auditing is the Army Air Force Exchange Service, which recovered $25 million in overpayments through recovery auditing in 1998.

H.R. 1827 would require Federal agencies to conduct recovery auditing on all payments over $500 million annually on goods and services for the use or direct benefit of the agency. Recovery audits would be optional for other payment activities.

This bill provides that the contractors simply identify potential overpay-ments. They have no authority to make determinations or to take collective action. However, these functions remain at all times with the agency itself. Audits are to be structured to produce the greatest financial gain to the government and must comply with a recovery audit standard to be set forth by the director of the Office of Management and Budget.

Agencies would be authorized to conduct recovery audits in house, contract with private recovery specialists, or use any combination of the two. The agency head would have the authority to use contingency contracts, whereby a contractor would be allowed to retain a percentage of collections from the overpayments they identify during the audit. The agency head would also be free to adopt compensation arrange-ments other than contingency fees. The bill provides the amounts recouped will be available to pay for a recovery audit contractor to reimburse appropriations for recovery audit costs incurred by the agency.

At least 50 percent of the overpay-ments recouped will go back to the general treasury of the government. Up to 25 percent of the overpayments recouped may be used for a management improvement program designed to pre-vent future overpayments and waste at the agency.

During the subcommittee markup on this bill, a number of concerns were discussed regarding reservations that the health care industry had about this bill. At that time, we, as a committee, pledged to work out a solution to those concerns before full markup. In keep-ing with that commitment, on Novem-ber 10 the gentleman from Indiana (Mr. BURTON) offered an amendment in the nature of a substitute which limited this bill to direct services to the government.

□ 1245

It is my understanding that this sub-stitute alleviated the concerns that were expressed by the health care in-dustry.

Also, at the full committee I offered an amendment which the committee adopted relating to privacy protections for individually identifiable information. This amendment will provide safeguards and remedies to people who might have had their records misused by private recovery auditing firms.

Additionally, the gentleman from California (Mr. WAXMAN), the ranking member, offered an amendment which was also adopted by the committee which ensures that the agency head will conduct a public-private cost com-parison before deciding to contract for recovery auditing services on the out-side.

I appreciate the bipartisanship that both of these amendments were negotiated under and which H.R. 1827 passed out of the committee on a voice vote.

Mr. Speaker, H.R. 1827 represents a significant step toward dealing with the billions of dollars in Federal over-payments that our committee disco-vered were made every year. I am pleased to be a cosponsor. Recovery au-diting is simply good government.

I again commend the gentleman from Indiana (Chairman HORN), the gentle-man from California (Mr. WAXMAN), and the gentleman from California (Chairman BURTON) for their leadership on the bill.

I urge the House to adopt H.R. 1827.

Mr. Speaker, I reserve the balance of my time.

Mr. HORN. Mr. Speaker, I yield such time as he may consume to the gen-tleman from Indiana (Mr. BURTON).

Mr. BURTON of Indiana. Mr. Speaker, as the author of the bill, I have just been informed that one of our col-leagues has some minor problems with the bill. In order to accommodate him, what I would like to do, with unani-mous consent of the House, is to with-draw the bill at this time, try to cor-rect any differences that we have, and then bring the bill up later today. I think we can do that in a relatively short period of time.

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman from Cali-for-nia (Mr. HORN) needs to withdraw the motion.

Mr. HORN. Mr. Speaker, I ask unani-mous consent to withdraw the motion to suspend the rules.

The SPEAKER pro tempore. Is there objection to the request of the gentle-man from California?