

PROVIDING FOR THE CONSIDERATION OF H.R. 1827,
GOVERNMENT WASTE CORRECTIONS ACT 1999

FEBRUARY 29, 2000.—Referred to the House Calendar and ordered to be printed

Mr. SESSIONS, from the Committee on Rules,
submitted the following

REPORT

[To accompany H. Res. 426]

The Committee on Rules, having had under consideration House Resolution 426, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for the consideration of H.R. 1827, the Government Waste Corrections Act of 1999, under an open rule. The rule provides one hour of general debate divided equally between the chairman and ranking minority member of the Committee on Government Reform.

The rule provides that, in lieu of the amendment recommended by the Committee on Government Reform and printed in the bill, the amendment in the nature of the substitute printed in this report be considered as original text for the purpose of amendment. The rule also waives clause 4 of rule XXI (prohibiting appropriations in a legislative bill) against provisions included in the amendment in the nature of the substitute. The rule further provides that the amendment in the nature of a substitute shall be open for amendment at any point.

Members who have pre-printed their amendments in the Congressional Record prior to their consideration will be given priority in recognition to offer their amendments if otherwise consistent with House rules. The rule allows the Chairman of the Committee of the Whole to postpone votes during consideration of the bill, and to reduce voting time to five minutes on a postponed question if the vote follows a fifteen minute vote. Finally, the rule provides for one motion to recommit, with or without instructions.

The waiver of clause 4 of rule XXI (prohibiting appropriations in a legislative bill) against provisions included in the amendment in the nature of the substitute is necessary because the amendment in the nature of a substitute contains a provision relating to the disposition of funds. This provision constitutes an appropriation of funds.

SUMMARY OF AMENDMENT IN THE NATURE OF A SUBSTITUTE MADE IN ORDER AS ORIGINAL TEXT FOR THE PURPOSE OF AMENDMENT

(1) Recovery audit requirement:

Mandates recovery audits for agencies that spend \$500,000,000 or more per year on the purchase of goods and services for the direct use of the agency (bill would not apply to payment activities of Medicare, Education, or other entitlement programs or grants);

Requirement wouldn't apply to DOD major weapons systems contracts until those contracts are closed;

Allows agency head to request an exemption from OMB if requirement would impede agency's mission or not be cost-effective;

Agency would have to consult first with IG and CFO to avoid duplication of effort;

Agency could perform audit in-house or by contract, as long as OMB standards for recovery audit (to be produced in accordance with this bill) are met;

If contracted out, the recovery audit contractor could be paid on a contingency fee basis;

The authority of any person under the Contract Disputes Act, or any other applicable laws would not be affected;

The recovery audit contractor would only be able to audit agency records;

The recovery audit contractor would not be able to physically establish presence for purposes of carrying out the recovery audit for the agency;

The recovery audit contractor would have to protect from improper use or disclosure otherwise confidential information;

The recovery audit contractor would have to report and give recommendations to the agency on the conditions giving rise to the overpayments;

The recovery audit contractor would have to notify agency head of overpayments or other problems beyond the scope of the recovery audit;

The agency would have to undergo a cost-comparison analysis before determining whether to contract for recovery auditing;

There is a limitation on the disclosure of individually-identifiable information.

(15) Disposition of amounts collected:

Amounts collected back may be used for the recovery audit costs;

No more than 25% may be used by the agency for management improvements directed at the overpayment problems in the agency;

At least 50% must be returned to the General Treasury;

These requirements would not apply with regard to NAFT's, revolving funds, working capital funds, trust funds;

Requirements to spend collected money on management improvement program or return money back to the Treasury wouldn't apply to open appropriation.

(21) Management Improvement Program:

Head of the agency must prioritize problems that contribute to overpayments;

Can do other things to reduce error and waste;

Can work this program with other agencies;

Must account for spending and activities in the Program.

(26) Responsibilities of OMB and GAO:

Director of OMB will coordinate and oversee implementation;

OMB to issue guidance 180 days after enactment;

OMB to issue recovery audit standards as part of guidance;

OMB may limit recovery audit contingency fees;

OMB may make exemptions if requirements go against agency mission or aren't cost-effective;

DOD's major weapons systems contracts are exempted until they are closed;

OMB must report to Congress on exemptions;

OMB must report to President and Congress on implementation;

GAO will report on implementation.

Comparison between bill as reported and amendment

Efforts have been made to clarify the bill's original intent by adding three definitions and making technical clarifications in other parts of the bill.

The bill originally contained a provision allowing OMB to make exemptions for payment activities if it goes against the agency's mission or wouldn't be cost-effective. The manager's amendment expands on this to explicitly authorize agency heads to request exemptions based on these same criteria.

The bill originally prohibited a recovery audit contractor from auditing anything but the agency's records. The manager's amendment expands on this issue by prohibiting a recovery auditor to establish a physical presence—to set up shop—at an entity that's the subject of the recovery audit. This addresses concerns by vendors that the recovery auditors can barge into the offices as part of the recovery audit.

The manager's amendment also stipulates that recovery auditing will apply to DOD's major weapons systems programs only after these contracts have been closed. This change addresses concerns by Rep. Bateman and others, that recovery auditing on major defense weapons systems procured with a cost-type contract would be problematic due to the "moving target" nature of progress payments and other complexities that might appear as overpayments one month, but then be reconciled in later months.

(Amendment Summary Provided By Staff at the Committee on Government Reform)

TEXT OF AMENDMENT IN THE NATURE OF A SUBSTITUTE MADE IN
ORDER AS ORIGINAL TEXT FOR THE PURPOSE OF AMENDMENT

Strike all after the enacting clause and insert the following:

SECTION. 1. SHORT TITLE.

This Act may be cited as the “Government Waste Corrections Act of 2000”.

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 and 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 private sector business 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 for each \$1,000,000,000 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 Federal agencies and activities, thereby resulting in the recovery of substantial amounts of overpayments annually. Limited recovery audits conducted by private contractors to date within 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 VI—RECOVERY AUDITS

“§ 3561. Definitions

“In this subchapter, the following definitions apply:

“(1) AMOUNTS COLLECTED.—The term ‘amounts collected’ means monies actually received by the United States Government.

“(2) CHIEF FINANCIAL OFFICER.—The term ‘Chief Financial Officer’ means the official established by section 901 of this title, or the functional equivalent of such official in the case of any agency that does not have a Chief Financial Officer under that section.

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

“(4) DISCLOSE.—The term ‘disclose’ means to release, publish, transfer, provide access to, or otherwise divulge individually identifiable information to any person other than the individual who is the subject of the information.

“(5) FACIAL-DISCREPANCY PAYMENT ERROR.—The term ‘facial-discrepancy payment error’—

“(A) except as provided in subparagraph (B), means any payment error that results from, is substantiated by, or is identified as a result of information contained on any invoice, delivery order, bill of lading, statement of account, or other document submitted to the Government by a supplier of goods or services in the usual and customary conduct of business, or as required by law or contract to substantiate payment for such goods or services, including any such document submitted electronically; and

“(B) does not include payment errors identified, resulting, or supported from documents that are—

“(i) records of a proprietary nature, maintained solely by the supplier of goods or services;

“(ii) not specifically required to be provided to the Government by contract, law, regulation, or to substantiate payment;

“(iii) submitted to the Government for evaluative purposes prior to the award of a contract, as part of the evaluation and award process.

Records, documents, price lists, or other vendor material published and available in the public domain shall not be considered sources of facial-discrepancy payment errors, but may be used to substantiate, clarify, or validate facial-discrepancy payment errors otherwise identified.

“(6) INDIVIDUALLY IDENTIFIABLE INFORMATION.—The term ‘individually identifiable information’ means any information, whether oral or recorded in any form or medium, that identifies the individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

“(7) 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.

“(8) PAYMENT ACTIVITY.—The term ‘payment activity’ means an executive agency 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.

“(9) RECOVERY AUDIT.—The term ‘recovery audit’ means a financial management technique applied internally by Government employees, or by private sector contractors, and used by executive agencies to audit their internal records to identify facial-discrepancy payment errors made by those executive agencies to vendors and other entities in connection with a payment activity, including facial-discrepancy payment errors that result from any of the following:

“(A) Duplicate payments.

“(B) Invoice errors.

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

“(D) Any other facial-discrepancy errors resulting in inaccurate payments.

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

“(11) RECOVERY AUDIT CONTRACTOR.—The term ‘recovery audit contractor’ means any person who has been hired by an executive agency to perform a recovery audit pursuant to a recovery audit contract.

“§ 3562. Recovery audit requirement

“(a) IN GENERAL.—Except as exempted 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);

“(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); and

“(3) may request that the Director exempt a payment activity, in whole or in part, from the requirement to conduct recovery audits under paragraph (1) if the head of the executive agency determines and can demonstrate that compliance with such requirement—

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

“(B) would not, or would no longer be, cost-effective.

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

“(1) shall consult and coordinate with the Chief Financial Officer and the Inspector General of the agency to avoid any duplication of effort;

“(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 internally 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; and

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

“(c) SCOPE OF AUDITS.—

“(1) IN GENERAL.—Each recovery audit of a payment activity under this section shall cover payments made by the payment activity in the preceding fiscal year, except that the first recovery audit of a payment activity shall cover payments made during the 2 consecutive fiscal years preceding the date of the enactment of the Government Waste Corrections Act of 2000.

“(2) ADDITIONAL FISCAL YEARS.—The head of an executive agency may conduct recovery audits of payment activities for additional preceding fiscal years if determined by the agency head to be practical and cost-effective subject to any statute of limitations constraints regarding recordkeeping under applicable law.

“(d) RECOVERY AUDIT 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 may pay the recovery audit 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) ADDITIONAL FUNCTIONS OF RECOVERY AUDIT CONTRACTOR.—

“(A) IN GENERAL.—In addition to performance of a recovery audit, a contract for such performance may authorize the recovery audit 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) LIMITATION.—A contract for performance of a recovery audit shall not affect—

“(i) the authority of the head of an executive agency, or any other person, under the Contract Disputes Act of 1978 and other applicable laws, including the authority to initiate litigation or referrals for litigation; or

“(ii) the requirements of sections 3711, 3716, 3718, and 3720 of this title that the head of an agency resolve disputes, compromise, or terminate overpayment claims, collect by setoff, and otherwise engage in recovery activity with respect to overpayments identified by the recovery audit.

“(3) LIMITATION ON AUTHORITY.—Nothing in this subchapter shall be construed to authorize a recovery audit contractor with an executive agency—

“(A) to require the production of any record or information by any person other than an officer, employee, or agent of the executive agency; and

“(B) to establish, or otherwise have a physical presence on the property or premises of any private sector entity as part of its contractual obligations to an executive agency.

“(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 improper use, and protect from disclosure to any person who is internal or external to the firm of the recovery audit contractor and who is not directly involved in the identification or recovery of overpayments, otherwise confidential or proprietary business information and financial information that may be viewed or obtained in the course of carrying out a recovery audit for an executive agency;

“(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 recovery audit contractor and any recommendations on how to mitigate such conditions;

“(C) notify the head of the executive agency and the Inspector General of the executive agency of any overpayments identified by the contractor pertaining to the executive agency or to another executive agency that are beyond the scope of the contract; and

“(D) promptly notify the head of the executive agency and the Inspector General of the executive agency of any indication of fraud or other criminal activity discovered in the course of the audit.

“(5) EXECUTIVE AGENCY ACTION FOLLOWING NOTIFICATION.—The head of an executive agency shall take prompt and appropriate action in response to a notification by a recovery audit contractor pursuant to the requirements under paragraph (4), including forwarding to other executive agencies any information that applies to them.

“(6) CONTRACTING REQUIREMENTS.—Prior to contracting for any recovery audit, the 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 recovery audit contractor.

“(e) INSPECTORS GENERAL.—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 nongovernmental entity that obtains individually identifiable information through performance

of recovery auditing or recovery activity under this chapter may disclose that information only 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 nonpecuniary damages, costs, and attorneys fees) caused by the violation.

“(2) DESTRUCTION OR RETURN OF INFORMATION.—Upon the conclusion of the matter or need for which individually identifiable information was disclosed in the course of recovery auditing or recovery activity under this chapter performed by a non-governmental entity, the nongovernmental 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.

“§ 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 recovery audits by an executive agency 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 recovery audit contractor for performance of the audit;

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

“(3) to pay any fees authorized under chapter 37 of this title.

“(c) USE FOR MANAGEMENT IMPROVEMENT PROGRAM.—Of the amount referred to in subsection (a), a sum not to exceed 25 percent of such amount—

“(1) shall be available to the executive agency to carry out the management improvement program of the agency under section 3564 of this title;

“(2) may be credited for that purpose by the agency head to any agency appropriations that are available for obligation at the time of collection; and

“(3) shall remain available for the same period as the appropriations to which credited.

“(d) REMAINDER TO TREASURY.—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) such other amounts as remain after the application of subsections (b) and (c).

“(e) LIMITATION ON APPLICATION.—

“(1) IN GENERAL.—This section shall not apply to amounts collected through recovery audits and recovery activity to the extent that such application would be inconsistent with another provision of law that authorizes crediting of the amounts to a nonappropriated 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 an appropriation or fund that remains available for obligation, or that remain available for recording, adjusting, and liquidating obligations properly chargeable to that appropriation or fund at the time the amounts are collected.

“§ 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 that meet 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 programs and operations of that executive agency by improving the executive agency’s staff capacity, information technology, and financial management.

“(c) INTEGRATION WITH OTHER ACTIVITIES.—The head of an executive agency—

“(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) must retain the ability to account specifically for the use of amounts made available under section 3563 of this title.

“§ 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 the subchapter. The Director shall issue initial guidance not later than 180 days after the date of enactment of the Government Waste Corrections Act of 2000.

“(2) RECOVERY AUDIT STANDARDS.—The Director shall include in the initial guidance under this subsection standards for the performance of recovery audits under this subchapter, that are developed in consultation with the Comptroller General of the United States and private sector experts on recovery audits, in-

cluding such experts who currently use recovery auditing as part of their financial management procedures.

“(c) FEE 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 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, or would no longer be cost-effective.

“(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.

“(3) EXEMPTION OF MAJOR DEFENSE SYSTEM ACQUISITION PROGRAMS.—

“(A) IN GENERAL.—Unless determined otherwise by the head of the agency authorized to conduct a Department of Defense major system acquisition program, the requirements of section 3562(a) of this title shall not apply to such a program procured with a cost-type contract until the contract has become a closed contract.

“(B) DEPARTMENT OF DEFENSE MAJOR SYSTEM ACQUISITION PROGRAM DEFINED.—In this paragraph, the term ‘Department of Defense major system acquisition program’ has the meaning that term has in Office of Management and Budget Circular A–109, as in effect on the date of the enactment of the Government Waste Corrections Act of 2000.

“(e) REPORTS.—

“(1) IN GENERAL.—Not later than 1 year after the date the Director issues initial guidance under subsection (b), 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 Governmental 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 setoffs);

“(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.

“§ 3566. General Accounting Office reports

“Not later than 60 days after issuance of each report under section 3565(e) 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 3501 of title 31, United States Code, is amended by inserting “and subchapter VI of this chapter” after “section 3513”.

(c) DEADLINE FOR INITIATION OF RECOVERY AUDITS.—The head of each executive agency shall begin 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 that section by not later than 18 months after the date of the enactment of this Act.

(d) CLERICAL AMENDMENT.—The analysis at the beginning of chapter 35 of title 31, United States Code, is amended by adding at the end the following:

“SUBCHAPTER V—RECOVERY AUDITS

“Sec.

“3561. Definitions.

“3562. Recovery audit requirement.

“3563. Disposition of amounts collected.

“3564. Management improvement program.

“3565. Responsibilities of the Office of Management and Budget.

“3566. General Accounting Office reports.”.

Amend the title so as to read: “A bill to improve the economy and efficiency of Government operations by requiring the use of recovery audits and recovery activity by Federal agencies.”.