

Calendar No. 733

107TH CONGRESS }
2d Session }

SENATE

{ REPORT
107-331

ACCOUNTABILITY OF TAX DOLLARS ACT
OF 2002

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2644

TO AMEND CHAPTER 35 OF TITLE 31, UNITED STATES CODE, TO
EXPAND THE TYPES OF FEDERAL AGENCIES THAT ARE RE-
QUIRED TO PREPARE AUDITED FINANCIAL STATEMENTS



NOVEMBER 4, 2002.—Ordered to be printed

Filed under authority of the order of the Senate of October 17, 2002

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Mr. LIEBERMAN, from the Committee on Governmental Affairs,
submitted the following

R E P O R T

[To accompany S. 2644]

The Committee on Governmental Affairs, to which was referred the bill (S. 2644) to amend chapter 35 of title 31, United States Code, to expand the types of Federal agencies that are required to prepare audited financial statements, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

I. PURPOSE AND SUMMARY

S. 2644 is a bill to amend title 31, United States Code, to expand the requirement to conduct annual audits of the agency's finances to all executive branch agencies in the federal government. Currently, only the 24 major departments and agencies covered by the Chief Financial Officers (CFO) Act (31 U.S.C. 3515) are required by law to prepare audited financial statements each year, although several independent agencies such as the Federal Communications Commission and the Federal Trade Commission have been doing so voluntarily.

II. BACKGROUND

Congress enacted the CFO Act in 1990 to improve Federal financial management. The Act requires 24 federal agencies to have Chief Financial Officers and Deputy Chief Financial Officers, and lays out their authority and functions. In 1994, Congress passed the Government Management Reform Act (GMRA), which expanded the CFO Act by establishing requirements for the prepara-

tion and audit of the 24 CFO Act agencies' financial statements. A report on the audit by the agency Inspector General or an independent auditor, which is often the General Accounting Office (GAO), must be submitted to the head of the agency.

GMRA also required the Department of Treasury to prepare a consolidated financial statement for these 24 agencies, which is audited by the Comptroller General. The government-wide statement reflects the overall financial position of the executive branch, including assets, liabilities, and results of operations of the executive branch. The statement also provides useful financial information on the workings of the federal government to the President, Congress, and the American public.

The financial reporting requirements of GMRA have prompted improvement in federal financial accountability. There has been steady progress at federal agencies toward achieving unqualified, or "clean," audit opinions. Only 6 of the 24 CFO Act agencies received clean opinions for fiscal year 1996, the first year GMRA was effective. For fiscal year 2001, 18 of the 24 agencies received clean opinions, and all of the CFO Act agencies met the statutory reporting deadline for the second year in a row.

In 2001, GAO surveyed 26 executive branch agencies not covered by the CFO Act to learn their views on having audited financial statements. Survey Results of Selected Non-CFO Act Agencies' Views on Having Audited Financial Statements, GAO-02-281R. These agencies all had budget authority for FY 1999 of at least \$10 million. Of the 26 agencies surveyed, 12 had conducted financial statements audits within the previous 5 years. Overall, the agencies reported that "they either achieved significant benefits or would anticipate achieving such benefits from having audited financial statements." Testimony of Gary T. Engel, Director, Financial Management and Assurance, GAO, Before the Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations, House Committee on Government Reform, May 14, 2002. Benefits cited included enhancing accountability, identifying inefficiencies and weaknesses, improving internal control, and monitoring assets and liabilities.

III. DISCUSSION OF LEGISLATION

S. 2644 extends the requirement to prepare and have audited annual financial statements to all executive branch agencies, not just those covered by the CFO Act. This requirement goes into effect on March 1, 2003. A substitute amendment filed by Senator Fitzgerald and adopted by the Committee at its October 9, 2002 markup allows the Office of Management and Budget (OMB) to exempt a non-CFO Act agency from this requirement if the agency's budget authority for the fiscal year does not exceed \$25 million and the OMB Director determines that requiring an audited financial statement from the agency for that fiscal year is unwarranted based on the agency's demonstrated performance, the absence of risks associated with the agency's operations, or other factors the Director considers relevant. The OMB Director must notify the Senate Committee on Governmental Affairs and the House Committee on Government Reform of each agency that receives an exemption for a fiscal year and the reasons for the exemption.

Under S. 2644, the OMB Director may also waive the requirement to prepare an audited financial statement for any non-CFO Act agency for the first two fiscal years after this Act becomes effective.

Non-CFO Act agencies that will be covered by the requirement to prepare audited financial statements under this legislation, unless they are exempted in a fiscal year by OMB, include:

- Advisory Council on Historic Preservation
- Armed Forces Retirement Home
- Commission on Civil Rights
- Commodity Futures Trading Commission
- Consumer Product Safety Commission
- Defense Nuclear Facilities Safety Board
- Denali Commission
- Equal Employment Opportunity Commission
- Farm Credit Administration
- Federal Communications Commission
- Federal Election Commission
- Federal Emergency Management Agency
- Federal Energy Regulatory Commission
- Federal Housing Finance Board
- Federal Labor Relations Authority
- Federal Mediation and Conciliation Service
- Federal Mine Safety and Health Review Commission
- Federal Reserve
- Federal Retirement Thrift Investment Board
- Federal Trade Commission
- Holocaust Memorial Museum
- Institute of Museum and Library Services
- Inter-American Foundation
- International Broadcasting Bureau
- International Trade Commission
- Merit Systems Protection Board
- National Archives and Records Administration
- National Capital Planning Commission
- National Commission on Libraries and Information Science
- National Council on Disability
- National Credit Union Administration
- National Foundation on the Arts and the Humanities
- National Indian Gaming Commission
- National Labor Relations Board
- National Mediation Board
- National Transportation Safety Board
- Navajo and Hopi Indian Relocation Commission
- Nuclear Waste Technical Review Board
- Occupational Safety and Health Review Commission
- Office of Government Ethics
- Office of Special Counsel
- Peace Corps
- Postal Rate Commission
- Presidio Trust
- Railroad Retirement Board
- Securities Exchange Commission
- Selective Service System
- Trade and Development Agency

- Voice of America

IV. LEGISLATIVE HISTORY

S. 2644 was introduced by Senator Fitzgerald on June 19, 2002 and was referred to the Committee on Governmental Affairs. At the Committee's markup on October 9, 2002, S. 2644 was reported out with a Fitzgerald substitute amendment by a rollcall vote of 9–0. Members present were Levin, Akaka, Durbin, Torricelli, Cleland, Carper, Carnahan, Dayton and Lieberman. Senator Fitzgerald's substitute conformed the provisions of S. 2644 to those of H.R. 4685 as passed by the House of Representatives.

The companion bill, H.R. 4685, was introduced in the House of Representatives by Representative Toomey on May 9, 2002. The bill was co-sponsored by a bipartisan group of 11 Representatives. On May 14, 2002, the Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations of the Committee on Government Reform held a hearing on H.R. 4685. Witnesses included Representative Toomey; Gary T. Engel, Director, Financial Management and Assurance, GAO; Mark A. Reger, Chief Financial Officer, Federal Communications Commission; Alison L. Doone, Deputy Staff Director for Management, Federal Election Commission; Frederick J. Zirkel, Inspector General, Federal Trade Commission, and Paul Brachfeld, Inspector General, National Archives and Records Administration. On June 18, 2002, the Subcommittee marked up H.R. 4685, with a manager's amendment.

On October 7, 2002, the House considered H.R. 4685 under suspension of the rules with a substitute amendment offered by Representative Horn. The substitute deleted the bill's requirement that non-CFO Act agencies also comply with the Federal Financial Management Improvement Act. H.R. 4685 as amended passed the House by voice vote.

V. SECTION-BY-SECTION ANALYSIS

Section 1 entitles the Act as the "Accountability of Tax Dollars Act of 2002."

Section 2(a) amends section 3515 of title 31, United States Code. It changes the list of agencies covered by section 3515's requirement to prepare annual audited financial statements by deleting the cross-reference to CFO Act agencies and replacing that reference with "each covered executive agency." It replaces the instruction to prepare such reports beginning in 1997 with 2003. It also adds new subsections (e) and (f) to section 3515.

New subsection (e) provides that the Director of OMB may exempt an agency from the requirement to prepare an audited financial statement in a fiscal year in which that agency's budget authority does not exceed \$25 million and the OMB Director determines that requiring the agency to prepare such a statement is not warranted because of the absence of risks associated with the agency's operations, the agency's demonstrated performance, or other factors that the Director considers relevant. The Director is required to notify the House Committee on Government Reform and the Senate Committee on Governmental Affairs of each agency that has received an exemption and the reasons for each exemption.

New subsection (f) defines the term “covered executive agency” to mean any executive agency that is not required by another provision of law to prepare and submit to Congress and OMB an audited financial statement for each fiscal year. The definition excludes a corporation, agency, or instrumentality subject to chapter 91 of title 31. The government corporations covered by that chapter are listed in section 9101 of title 31 and include entities such as the Federal Deposit Insurance Corporation, the Government National Mortgage Association, and the Pension Benefit Guaranty Corporation.

Section 2(b) allows OMB to waive the application of this legislation to any non-CFO Act agency for the first two fiscal years after the enactment of this legislation. This provision responds to concerns that agencies that have not previously been required to prepare audited financial statements need time to train and engage in other necessary preparations.

VI. EVALUATION OF REGULATORY IMPACT

Paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate “the regulatory impact which would be incurred in carrying out this bill.”

The enactment of this legislation will not have significant regulatory impact.

VII. CBO COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 23, 2002.

Hon. JOSEPH I. LIEBERMAN,
*Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2644, the Accountability of Tax Dollars Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 2644—Accountability of Tax Dollars Act of 2002

S. 2644 would amend title 31 of the United States Code to expand the number of federal agencies that are required to prepare audited financial statements. Under the bill, all executive agencies with budget authority of \$25 million or more would be required to submit audited financial statements to the Congress and the Office of Management and Budget (OMB) by March 1, 2003. The bill also would allow OMB to waive the audit requirement for an additional two years.

S. 2644 would expand the requirements of the Chief Financial Officers Act to more than 20 additional executive agencies. Based on a recent report by the General Accounting Office concerning agency auditing costs, and on information from OMB, CBO esti-

mates that implementing S. 2644 would cost about \$5 million annually beginning in 2005, subject to the availability of appropriated funds. (This estimate assumes that OMB would exercise the option to waive the audit requirement for two years.) In addition, enacting the bill would not affect direct spending or revenues.

The use of audited financial statements could help agencies strengthen accountability, better monitor assets and liabilities, enhance cost controls, and identify inefficiencies. Improved financial information also could reduce waste and fraud, but we have no basis for estimating any potential savings from these actions.

S. 2644 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VIII. CHANGES TO EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 2644 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in *italic*, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 31—MONEY AND FINANCE

* * * * *

CHAPTER 35—ACCOUNTING AND COLLECTION

* * * * *

§ 3515. Financial statements of agencies

(a) **[Not later]** *(1) Except as provided in subsection (e), not later than March 1 of [1997] 2003 and each year thereafter, the head of [each executive agency identified in section 901(b) of this title] each covered executive agency shall prepare and submit to the Congress and the Director of the Office of Management and Budget an audited financial statement for the preceding fiscal year, covering all accounts and associated activities of each office, bureau, and activity of the agency.*

(b) Each audited financial statement of **[an executive agency]** *a covered executive agency* under this section shall reflect—

(1) the overall financial position of the offices, bureaus, and activities covered by the statement, including assets and liabilities thereof; and

(2) results of operations of those offices, bureaus, and activities.

(c) The Director of the Office of Management and Budget shall identify components of **[executive agencies]** *covered executive agencies* that shall be required to have audited financial statements meeting the requirements of subsection (b).

(d) The Director of the Office of Management and Budget shall prescribe the form and content of the financial statements of **executive agencies** *covered executive agencies* under this section, consistent with applicable accounting and financial reporting principles, standards, and requirements.

(e)(1) *The Director of the Office of Management and Budget may exempt a covered executive agency, except an agency described in section 901(b), from the requirements of this section with respect to a fiscal year if—*

(A) *the total amount of budget authority available to the agency for the fiscal year does not exceed \$25,000,000; and*

(B) *the Director determines that requiring an annual audited financial statement for the agency with respect to the fiscal year is not warranted due to the absence of risks associated with the agency's operations, the agency's demonstrated performance, or other factors that the Director considers relevant.*

(2) *The Director shall annually notify the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate of each agency the Director has exempted under this subsection and the reasons for each exemption.*

(f) *The term "covered executive agency"—*

(1) *means an executive agency that is not required by another provision of Federal law to prepare and submit to Congress and the Director of the Office of Management and Budget an audited financial statement for each fiscal year, covering all accounts and associated activities of each office, bureau, and activity of the agency; and*

(2) *does not include a corporation, agency, or instrumentality subject to chapter 91 of this title.*