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GOVERNMENT CHARGE CARD ABUSE PREVENTION ACT OF 2011

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 300

TO PREVENT ABUSE OF GOVERNMENT CHARGE CARDS



JULY 18, 2011.—Ordered to be printed

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JULY 18, 2011.—Ordered to be printed

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

R E P O R T

[To accompany S. 300]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 300) to prevent abuse of Government charge cards, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

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I. PURPOSE AND SUMMARY

For more than a decade, federal agencies have issued charge cards to many of their employees, enabling those employees to charge travel and other job-related expenses, with the government ultimately footing the bill. Although the use of these charge cards saves the government both time and money when compared with the traditional, highly bureaucratic system of paper submissions and reimbursements, a small number of employees have abused their travel and charge cards, causing the government to incur unnecessary and sometimes fraudulent expenses. S. 300 would address this problem by requiring agencies to, among other things,

adopt better internal controls over the use of these cards, perform credit checks on potential recipients of cards issued for travel purposes, and appropriately discipline employees who misuse charge cards.

II. Background and Need for the Legislation

Since 1998, federal departments and agencies have utilized government charge cards through the General Service Administration's (GSA's) SmartPay program. GSA offers two main types of charge cards: purchase cards and travel cards. Agency employees use purchase cards to buy commercial goods and services on behalf of their agencies, and the agencies pay the bills for those cards directly to their contractor bank. Employees use government travel cards to pay for official travel expenses. Depending on the particular card, the bill might be sent to the employee, who then pays it and obtains reimbursement from his or her agency, or the contractor bank bills the government directly.

Agencies use government charge cards as a low-cost method to streamline government acquisition and travel processes. According to GSA, it costs nothing for agencies to obtain charge card services, but the use of the cards has generated more than $1 billion in gross agency rebates over the past 10 years under contractual provisions requiring the credit card companies to pay rebates, also known as refunds, to agencies based on amounts charged to the cards.[1] GSA also estimates that agencies avoid an estimated $1.8 billion in agency administrative processing costs annually by using charge cards instead of paper-based procurement processes.

Although the program has been highly successful, it has suffered from recurring cases of waste, fraud, and abuse. Numerous Government Accountability Office (GAO) reports over the last decade have identified inadequate and inconsistent controls across federal agencies with respect to both purchase and travel cards.[2] The lack of adequate management has led to the waste of millions of dollars in taxpayer money on fraudulent, questionable or unnecessarily expensive purchases. Additionally, late or non-payment of travel card bills by federal employees triggers contractual provisions allowing the vendor banks to reduce rebates, causing the government to forfeit millions of dollars in lost rebates.[3]

GAO issued a report in March 2008 entitled, *Governmentwide Purchase Cards: Actions Needed to Strengthen Internal Controls to*

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[1] According to GSA, in fiscal year 2010, agencies made approximately 98.9 million transactions and charged $30.2 billion using SmartPay charge cards, creating $325.9 million in rebates.

[2] *See, e.g.,* GAO, *Purchase Cards: Control Weaknesses Leave DHS Highly Vulnerable to Fraudulent, Improper, and Abusive Activity,* GAO–06–1117 (Washington, D.C.: Sept. 28, 2006); GAO, *DoD Travel Cards: Control Weaknesses Resulted in Millions of Dollars of Improper Payments,* GAO 04–576 (Washington, D.C.: June 9, 2004); GAO, *Purchase Cards: Increased Management Oversight and Control Could Save Hundreds of Millions of Dollar,* GAO–04–717T (Washington, D.C.: April 28, 2004); GAO, *Purchase Cards: Steps Taken to Improve DOD Program Management, but Actions Needed to Address Misuse.* GAO–03–156 (Washington D.C.: Dec. 2, 2003); GAO, *Travel Cards: Internal Control Weaknesses at DoD Led to Improper Use of First and Business Class Travel,* GAO–04–88 (Washington, D.C.: Oct. 24, 2003); GAO, *Purchase Cards: Control Weaknesses Leave Army Vulnerable to Fraud, Waste, and Abuse,* GAO–02–844T (Washington, D.C.: July 17, 2002); GAO, *Purchase Cards: Control Weaknesses Leave Two Navy Units Vulnerable to Fraud and Abuse,* GAO–02–32 (Washington, D.C.: Nov. 30, 2001).

[3] For example, in one review, GAO found that the Army collected only $635,000 of a possible $3 million in rebates in fiscal year 2001 due to untimely payment of accounts. GAO, *Travel Cards: Control Weaknesses Leave Army Vulnerable to Potential Fraud and Abuse,* GAO–03–169 (Washington, D.C.: Oct. 11, 2002) at p. 17.

Reduce Fraudulent, Improper, and Abusive Purchases.[4] This report found that, despite previous GAO reports on this issue and new regulations, various government agencies still lacked adequate internal controls over government purchase cards, leading to waste, fraud, and abuse. Using a statistical sample of purchase card transactions, GAO estimated that nearly 41 percent of the transactions failed to meet basic internal control standards, and GAO found numerous instances of fraud.[5] For example, one cardholder used the purchase card program to embezzle over $642,000 over a period of six years from the Department of Agriculture.[6] A postmaster at the U.S. Postal Service used his government purchase card to fraudulently subscribe to two internet dating services from April 2004 to October 2006.[7]

The Government Charge Card Abuse Prevention Act is based largely on GAO's recommendations for preventing this recurring waste, fraud, and abuse. The bill mandates a consistent set of core internal controls for every agency to utilize to prevent and detect improper use of government charge cards. For example, it mandates the use of systems, techniques, and technologies to prevent or identify improper purchases. These measures could include use of controlling merchant codes to prevent a card from being used at a business that does not provide goods and services that are appropriate to the function for which the card is issued. The measures could also include utilizing statistical machine learning and pattern recognition technologies that assess the risk of every transaction. Commercial credit card issuers currently use these technologies to flag purchases that do not fit normal purchasing patterns for particular cardholders.

The Government Charge Card Abuse Prevention Act also requires each agency Inspector General to periodically conduct risk assessments of agency purchase card and travel card programs and perform periodic audits to identify potential fraudulent, improper, and abusive use of government charge cards. GAO and agency Inspectors General have successfully used techniques like data mining to reveal instances of improper use of government charge cards. Having this information more routinely available would help strengthen and maintain a rigorous system of internal controls to prevent future instances of waste, fraud, and abuse with government charge cards.

In addition, GAO's investigations often have found inconsistent or nonexistent consequences for federal employees who misused or abused government charge cards.[8] The Government Charge Card Abuse Prevention Act requires agencies to adopt a disciplinary policy to better ensure that employees who abuse government charge cards face consistent and appropriate consequences, including dismissal where appropriate, thus creating a deterrent effect that will prevent future misuse.

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[4] GAO–08–333 (Washington D.C.: March 14, 2008).

[5] *Id.* It is worth noting that GAO did not assert that 41 percent of the charges were improper; rather, the failure to follow internal control standards raised the risk to the government of waste, fraud and abuse. GAO's investigation was not designed to determine the overall extent of fraudulent, improper, or abusive charge card transactions.

[6] GAO 08–333, *supra* note 4, at p. 7.

[7] *Id.*

[8] *See,. e.g.,* GAO–08–333, *supra* note 4, at p. 7; GAO–06–1117, *supra* note 2, at pp. 3, 10–11; GAO–04–717T, *supra* note 2, at pp. 2–3. 11–12.

The Committee urges federal agencies, in implementing the requirements of the Government Charge Card Abuse Prevention Act, to review and utilize best practices for running their purchase card and travel card programs. In this respect, GAO's *Audit Guide: Auditing and Investigating the Internal Control of Government Purchase Card Programs* provides a useful summary of the best practices for establishing and monitoring internal controls for government purchase card programs.[9]

III. Legislative History

The Government Charge Card Abuse Prevention Act of 2011 was originally introduced in the 111th Congress as S. 942 by Senator Chuck Grassley on April 30, 2009, and was referred to the Committee on Homeland Security and Governmental Affairs. Chairman Lieberman, Ranking Minority Member Collins, Senator Carper, and Senator Begich cosponsored the bill. On May 20, 2009, the Committee favorably reported S. 942 by voice vote. S. 942 passed the Senate by unanimous consent on October 7, 2009 and was subsequently referred to the House Oversight and Government Reform and House Armed Services Committees. Neither Committee took further action on the bill.

Senator Grassley reintroduced the bill this Congress on February 8, 2011. S. 300 was again referred to the Committee on Homeland Security and Governmental Affairs. Chairman Lieberman, Ranking Member Collins and Senator Tester cosponsored the bill. On April 13, 2011, the Committee favorably reported S. 300 by voice vote. Senators present for the vote were Lieberman, Levin, Akaka, Carper, Begich, Collins, Coburn, McCain and Johnson (Wisconsin).

IV. Section-by-Section Analysis

Section 1. Short title

Section 1 designates the name of the act as the "Government Charge Card Abuse Prevention Act of 2011."

Section 2. Management of purchase cards

Subsection (a) requires the head of each executive agency that issues and uses, for purposes of official government procurements, purchase cards and convenience checks—checks written against a purchase card account—to establish and maintain safeguards and internal controls to ensure effective management, such as: keeping a record in each executive agency of each holder of a purchase card issued by the agency for official use; assigning each cardholder an approving official; requiring reconciliation of the charges by the purchase cardholder and approving official with supporting documentation; ensuring payments are made promptly for valid purchases; retaining records of each purchase card transaction in accordance with government policies on disposition of records; invalidating purchase cards for employees who cease to be employed by the agency or transfer to another unit of the agency; and providing appropriate training to cardholders.

Subsection (b) provides that no later than 180 days after the date of the enactment of this Act, the Director of the Office of Manage-

[9] GAO–04–87G (Washington, D.C.: Nov. 1, 2003).

ment and Budget (OMB) shall review the existing guidance and, as necessary, prescribe additional guidance governing the implementation of the safeguards and internal controls required by subsection (a) by executive agencies.

Subsection (c) requires the head of each executive agency to provide for appropriate adverse personnel actions or other punishment, including dismissal of the employee as appropriate, in cases in which an employee of the agency violates agency policies implementing the guidance required by subsection (b) or makes improper, erroneous, or illegal purchases with purchase cards or convenience checks. This subsection also requires that the guidance required by subsection (b) mandate that each head of an executive agency with more than $10,000,000 in purchase card spending annually, and each Inspector General of such an executive agency, on a semi-annual basis, submit to the Director of OMB a joint report on violations of the guidance.

Subsection (d) requires the Inspector General of each executive agency to conduct periodic assessments of the agency's purchase card or convenience check programs to identify and analyze weaknesses; perform analyses or audits, as necessary, of purchase card transactions designed to identify potentially illegal, improper, erroneous, and abusive uses of purchase cards, patterns of such uses, and categories of purchases that could be made by means other than purchase cards; and report to the Director of OMB on the implementation of recommendations made to the head of the executive agency to address findings of any analysis or audit of purchase card and convenience check transactions.

Subsection (e) provides that the term "executive agency" has the meaning given such term in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. § 403(1)), except as provided under subsection (f).

Subsection (f) clarifies that subsections (a) through (d) do not apply to the Department of Defense, which is subject to similar requirements under 10 U.S.C. § 2784. This subsection makes further conforming amendments to 10 U.S.C. § 2784 in order to harmonize military and civilian regulations. The subsection also requires the Inspector General of the Department of Defense to conduct periodic assessments similar to those required in subsection (d) and to submit, jointly with the Secretary of Defense, a semi-annual report to the Director of OMB.

Section 3. Management of travel cards

Section 3 amends Section 2 of the Travel and Transportation Reform Act of 1998 (Public Law 105–264; 5 U.S.C. § 5701 note) by adding a new subsection that requires the head of each executive agency that issues travel cards (charge cards issued for use on official government travel) to its employees to establish and maintain internal control activities over travel charge cards, including: maintaining a record of each holder of a travel charge card issued on behalf of the agency for official use; monitoring rebates and refunds based on prompt payment, sales volume, or other actions on travel charge card accounts; conducting periodic reviews to determine whether each travel charge cardholder has a need for the travel charge card; and providing appropriate training to travel card holders.

The new subsection also requires that each executive agency ensure its contractual arrangement with travel charge card issuing contractors contains a requirement to evaluate the creditworthiness of an individual before issuing that individual a travel card, and that no individual is issued a travel card if that individual is found not creditworthy as a result of the evaluations. (This same requirement has been imposed for several years on agencies on a year-to-year basis by annual appropriations Acts.) An agency is not precluded from issuing a restricted use travel card or pre-paid card when the individual lacks a credit history or has a credit score below the minimum credit score established by OMB. The section requires the Director of OMB to establish a minimum credit score for determining the creditworthiness of an individual based on rigorous statistical analysis of the population of cardholders and historical behaviors.

Additionally, this section requires that, not later than 180 days after the date of enactment, the Director of OMB must revise, as necessary, guidance on the management of travel cards. The section further requires that each agency take appropriate adverse personnel actions, including removal where appropriate, against employees who have failed to comply with travel charge card terms or agency regulations, or have committed fraud with respect to a travel charge card. The section also requires that each head of an executive agency with more than $10,000,000 in travel card spending annually, and each Inspector General of such an executive agency, on a semi-annual basis, submit to the Director of OMB a joint report on such violations. Additionally, the section requires the Inspector General of each federal agency to conduct periodic assessments of travel card programs and controls.

Section 4. Management of centrally billed accounts

Section 4 requires the head of an executive agency that has employees who use a travel charge card that is billed directly to the United States Government to establish and maintain internal control activities to compare items on an employee's travel voucher to items paid for using a centrally billed account. This section also requires the OMB Director to prescribe guidance for implementing internal control requirements for centrally billed accounts not later than 180 days after the date of enactment of this Act.

Section 5. Construction

Section 5 provides that nothing in the Act shall be construed to excuse the head of an executive agency from the responsibilities established in 31 U.S.C. § 3512 (relating to executive agency accounting and other financial management and plans), or in the Improper Payments Act of 2002 (31 U.S.C. § 3321 note).

V. Evaluation of Regulatory Impact

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. It concurs with the Congressional Budget Office that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect state, local, and tribal governments. The

enactment of this legislation will not have significant regulatory impact.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

APRIL 26, 2011.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 300, the Government Charge Card Abuse Prevention Act of 2011.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 300—Government Charge Card Abuse Prevention Act of 2011

S. 300 would require each executive branch agency to establish controls on the use of government credit cards. The bill would require each agency's inspector general (IG) to assess the risk of illegal or improper credit card use and to conduct periodic audits to identify potentially fraudulent activities. The bill also would allow agencies to dismiss employees who are found guilty of misusing government credit cards.

CBO estimates that implementing S. 300 would cost less than $500,000 a year, subject to the availability of appropriated funds. The bill also could affect direct spending by agencies not funded through annual appropriations, such as the Tennessee Valley Authority and the Bonneville Power Administration; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would not be significant. Enacting S. 300 would not affect revenues.

Under current law, agencies must take certain actions to manage the use of government credit cards, including establishing policies and procedures, conducting oversight, and penalizing unauthorized use of government cards. Most of the provisions of S. 300 would codify current policies and practices. Based on information from the Office of Management and Budget (which sets procurement policy), the General Services Administration (the contract administrator for federal credit cards), and several agency IGs, CBO estimates that implementing the bill would add a small amount of administrative costs to the oversight of the use of government charge cards.

S. 300 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 Theresa Gullo, Deputy Assistant Director for Budget Analysis.

VII. CHANGES TO EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 300 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):

TITLE 10—ARMED FORCES

Subtitle A—General Military Law

Part IV—Service, Supply, and Procurement

Chapter 165—Accountability and Responsibility

* * * * * * *

SEC. 2784. MANAGEMENT OF PURCHASE CARDS.

(a) * * *

(b) REQUIRED SAFEGUARDS AND INTERNAL CONTROLS.—Regulations under subsection (a) shall include safeguards and internal controls to ensure the following:

(1) * * *

* * * * * * *

(11) That each purchase cardholder and individual issued a convenience check is assigned an approving official other than the cardholder with the authority to approve or disapprove transactions.

(12) That the Department of Defense utilizes effective systems, techniques, and technologies to prevent or identify fraudulent purchases.

(13) That the Department of Defense takes appropriate steps to invalidate the purchase card of each employee who—

(A) ceases to be employed by the Department of Defense, immediately upon termination of the employment of the employee; or

(B) transfers to another unit of the Department of Defense immediately upon the transfer of the employee unless the Secretary of Defense determines that the units are covered by the same purchase card authority.

(14) That the Department of Defense takes appropriate steps to recover the cost of any erroneous, improper or illegal purchase made with a purchase card or convenience check by an employee, including, as necessary, through salary offsets.

(15) That the Inspector General of the Department of Defense conducts periodic assessments of purchase card or convenience check programs to identify and analyze risks of illegal, improper, or erroneous purchases and payments and uses such risk assessments to develop appropriate recommendations for corrective actions.

(c) * * *

(d) SEMI-ANNUAL REPORT.—The Secretary of Defense and the Inspector General of the Department of Defense, shall submit to the Director of the Office of Management and Budget on a semiannual basis a joint report on illegal, improper, or erroneous purchases and payments made with purchase cards or convenience checks by employees of the Department of Defense. At a minimum, the report shall include the following:

(1) A description of each violation.

(2) A description of any adverse personnel action, punishment, or other action taken against the employee for such violation.

(3) A description of actions taken by the Department of Defense to address recommendations made to address findings arising out of risk assessments and audits conducted pursuant to this section.

TRAVEL AND TRANSPORTATION REFORM ACT OF 1998

(Public Law 105–264; 5 U.S.C. § 5701, note)

* * * * * * *

(a) * * *

* * * * * * *

(h) MANAGEMENT OF TRAVEL CHARGE CARDS.—

(1) REQUIRED SAFEGUARDS AND INTERNAL CONTROLS.—The head of each executive agency that has employees that use travel charge cards shall establish and maintain the following internal control activities to ensure the proper, efficient, and effective use of such travel charge cards:

(A) There is a record in each executive agency of each holder of a travel charge card issued on behalf of the agency for official use, annotated with the limitations on amounts that are applicable to the use of each such card by that travel charge cardholder.

(B) Rebates and refunds based on prompt payment sales volume, or other actions by the agency on travel charge card accounts are monitored for accuracy and properly recorded as a receipt of the agency that employs the cardholder.

(C) Periodic reviews are performed to determine whether each travel charge cardholder has a need for the travel charge card.

(D) Appropriate training is provided to each travel charge cardholder and each official with responsibility for overseeing the use of travel charge cards issued by an executive agency.

(E) Each executive agency has specific policies regarding the number of travel charge cards issued for various component organizations and categories of component organizations, the credit limits authorized for various categories of cardholders, and categories of employees eligible to be issued travel charge cards, and designs those policies to minimize the financial risk to the Federal Government of the issuance of the travel charge cards and to ensure the integrity of the travel charge cardholders.

(F) Each executive agency ensures its contractual arrangement with each servicing travel charge card issuing contractor contains a requirement to evaluate the creditworthiness of an individual before issuing that individual a travel charge card, and that no individual be issued a travel charge card if that individual is found not creditworthy as a result of the evaluation (except that this para-

graph shall not preclude issuance of a restricted use travel charge card or pre-paid card when the individual lacks a credit history or has a credit score below the minimum credit score established by the Office of Management and Budget). The Director of the Office of Management and Budget shall establish a minimum credit score for determining the creditworthiness of an individual based on rigorous statistical analysis of the population of cardholders and historical behaviors. Notwithstanding any other provision of law, such evaluation shall include an assessment of an individual's consumer report from a consumer reporting agency as those terms are defined in section 603 of the Fair Credit Reporting Act.

(G) Each executive agency utilizes effective systems, techniques, and technologies to prevent or identify improper purchases.

(H) Each executive agency ensures that the travel charge card of each employee who ceases to be employed by the agency is invalidated immediately upon termination of the employment of the employee.

(I) Each executive agency utilizes, where appropriate, direct payment to the holder of the travel card contract.

(2) GUIDANCE ON MANAGEMENT OF TRAVEL CHARGE CARDS.—Not later than 180 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall review the existing guidance and, as necessary, prescribe additional guidance for executive agencies governing the implementation of the requirements in paragraph (1).

(3) PENALTIES FOR VIOLATIONS.—

(A) IN GENERAL.—Consistent with the guidance prescribed under paragraph (2), each executive agency shall provide for appropriate adverse personnel actions to be imposed in cases in which employees of the executive agency fail to comply with applicable travel charge card terms and conditions or applicable agency regulations or commit fraud with respect to a travel charge, including removal in appropriate cases.

(B) REPORTS ON VIOLATIONS.—The guidance prescribed under paragraph (2) shall require each head of an executive agency with more than $10,000,000 in travel card spending annually, and each inspector general of such an executive agency, on a semi-annual basis, to submit to the Director of the Office of Management and Budget a joint report on violations or other actions covered by subparagraph (A) by employees of such executive agency. At a minimum, the report shall set forth the following:

(i) A description of each violation.

(ii) A description of any adverse personnel action, punishment, or other action taken against the employee for such violation or other action.

(4) RISK ASSESSMENTS AND AUDITS.—The Inspector General of each executive agency shall—

(A) conduct periodic assessments of the agency travel charge card program and associated internal controls to identify and analyze risks of illegal, improper, or erroneous

travel charges and payments in order to develop a plan for using such risk assessments to determine the scope, frequency, and number of periodic audits of travel charge card transactions;

(B) perform periodic analysis and audits, as appropriate, of travel charge card transactions designed to identify potentially improper, erroneous, and illegal uses of travel charge cards;

(C) report to the head of the executive agency concerned on the results of such analysis and audits; and

(D) report to the Director of the Office of Management and Budget on the implementation of recommendations made to the head of the executive agency to address findings of any analysis or audit of travel charge card transactions or programs for compilation and transmission by the Director to Congress and the Comptroller General.

(5) DEFINITIONS.—In this subsection:

(A) The term "executive agency" means an agency as that term is defined in subparagraphs (A) and (B) of section 5701(1) of title 5, United States Code.

(B) The term "travel charge card" means any Federal contractor-issued travel charge card that is individually billed to each cardholder.

○