

in the United States Court of Federal Claims. In any such action based on a procurement or proposed procurement with respect to which a protest has been filed under this subchapter, the reports required by sections 3553(b)(2) and 3554(e)(1) of this title with respect to such procurement or proposed procurement and any decision or recommendation of the Comptroller General under this subchapter with respect to such procurement or proposed procurement shall be considered to be part of the agency record subject to review.

(Added Pub. L. 98-369, div. B, title VII, §2741(a), July 18, 1984, 98 Stat. 1202; amended Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104-320, §12(f), Oct. 19, 1996, 110 Stat. 3876.)

AMENDMENTS

1996—Pub. L. 104-320, which directed the amendment of this section by striking “a court of the United States or” in first sentence, was executed by striking “a district court of the United States or” after “to file an action in” in first sentence to reflect the probable intent of Congress.

1992—Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-320 effective Jan. 1, 2001, see section 12(f) of Pub. L. 104-320, set out as a Non-exclusivity of GAO Remedies note below.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section applicable with respect to any protest filed after Jan. 14, 1985, see section 2751(b) of Pub. L. 98-369, set out as a note under section 251 of Title 41, Public Contracts.

NONEXCLUSIVITY OF GAO REMEDIES

Section 12(f) of Pub. L. 104-320 provided that: “In the event that the bid protest jurisdiction of the district courts of the United States is terminated pursuant to subsection (d) [set out as a Sunset Provision note under section 1491 of Title 28, Judiciary and Judicial Procedure], then section 3556 of title 31, United States Code, shall be amended by striking ‘a court of the United States or’ in the first sentence.” [Bid protest jurisdiction of the district courts of the United States terminated on Jan. 1, 2001, pursuant to section 12(d) of Pub. L. 104-320.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 3862.

SUBCHAPTER VI—RECOVERY AUDITS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 3501 of this title.

§ 3561. Identification of errors made by executive agencies in payments to contractors and recovery of amounts erroneously paid

(a) PROGRAM REQUIRED.—The head of each executive agency that enters into contracts with a total value in excess of \$500,000,000 in a fiscal

year shall carry out a cost-effective program for identifying any errors made in paying the contractors and for recovering any amounts erroneously paid to the contractors.

(b) RECOVERY AUDITS AND ACTIVITIES.—A program of an executive agency under subsection (a) shall include recovery audits and recovery activities. The head of the executive agency shall determine, in accordance with guidance provided under subsection (c), the classes of contracts to which recovery audits and recovery activities are appropriately applied.

(c) OMB GUIDANCE.—The Director of the Office of Management and Budget shall issue guidance for the conduct of programs under subsection (a). The guidance shall include the following:

(1) Definitions of the terms “recovery audit” and “recovery activity” for the purposes of the programs.

(2) The classes of contracts to which recovery audits and recovery activities are appropriately applied under the programs.

(3) Protections for the confidentiality of—

(A) sensitive financial information that has not been released for use by the general public; and

(B) information that could be used to identify a person.

(4) Policies and procedures for ensuring that the implementation of the programs does not result in duplicative audits of contractor records.

(5) Policies regarding the types of contracts executive agencies may use for the procurement of recovery services, including guidance for use, in appropriate circumstances, of a contingency contract pursuant to which the head of an executive agency may pay a contractor an amount equal to a percentage of the total amount collected for the United States pursuant to that contract.

(6) Protections for a contractor’s records and facilities through restrictions on the authority of a contractor under a contract for the procurement of recovery services for 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;

(B) to establish, or otherwise have, a physical presence on the property or premises of any private sector entity for the purposes of performing the contract; or

(C) to act as agents for the Government in the recovery of funds erroneously paid to contractors.

(7) Policies for the appropriate types of management improvement programs authorized by section 3564 of this title that executive agencies may carry out to address overpayment problems and the recovery of overpayments.

(Added Pub. L. 107-107, div. A, title VIII, §831(a)(1), Dec. 28, 2001, 115 Stat. 1186.)

REPORTS ON IMPLEMENTATION OF RECOVERY AUDITS

Pub. L. 107-107, div. A, title VIII, §831(b), Dec. 28, 2001, 115 Stat. 1188, provided that:

“(1) Not later than 30 months after the date of the enactment of this Act [Dec. 28, 2001], and annually for

each of the first two years following the year of the first report, the Director of the Office of Management and Budget shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate, a report on the implementation of subchapter VI of chapter 35 of title 31, United States Code (as added by subsection (a)).

“(2) Each report shall include—

“(A) a general description and evaluation of the steps taken by the heads of executive agencies to carry out the programs under such subchapter, including any management improvement programs carried out under section 3564 of such title 31;

“(B) the costs incurred by executive agencies to carry out the programs under such subchapter; and

“(C) the amounts recovered under the programs under such subchapter.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3562, 3563, 3564 of this title.

§ 3562. Disposition of recovered funds

(a) AVAILABILITY OF FUNDS FOR RECOVERY AUDITS AND ACTIVITIES PROGRAM.—Funds collected under a program carried out by an executive agency under section 3561 of this title shall be available to the executive agency for the following purposes:

(1) To reimburse the actual expenses incurred by the executive agency in the administration of the program.

(2) To pay contractors for services under the program in accordance with the guidance issued under section 3561(c)(5) of this title.

(b) FUNDS NOT USED FOR PROGRAM.—Any amounts erroneously paid by an executive agency that are recovered under such a program of an executive agency and are not used to reimburse expenses or pay contractors under subsection (a)—

(1) shall be credited to the appropriations from which the erroneous payments were made, shall be merged with other amounts in those appropriations, and shall be available for the purposes and period for which such appropriations are available; or

(2) if no such appropriation remains available, shall be deposited in the Treasury as miscellaneous receipts.

(c) PRIORITY OF OTHER AUTHORIZED DISPOSITIONS.—Notwithstanding subsection (b), the authority under such subsection may not be exercised to use, credit, or deposit funds collected under such a program as provided in that subsection to the extent that any other provision of law requires or authorizes the crediting of such funds to a nonappropriated fund instrumentality, revolving fund, working-capital fund, trust fund, or other fund or account.

(Added Pub. L. 107–107, div. A, title VIII, § 831(a)(1), Dec. 28, 2001, 115 Stat. 1187.)

§ 3563. Sources of recovery services

(a) CONSIDERATION OF AVAILABLE RECOVERY RESOURCES.—(1) In carrying out a program under section 3561 of this title, the head of an executive agency shall consider all resources available to that official to carry out the program.

(2) The resources considered by the head of an executive agency for carrying out the program shall include the resources available to the executive agency for such purpose from the following sources:

(A) The executive agency.

(B) Other departments and agencies of the United States.

(C) Private sector sources.

(b) COMPLIANCE WITH APPLICABLE LAW AND REGULATIONS.—Before entering into a contract with a private sector source for the performance of services under a program of the executive agency carried out under section 3561 of this title, the head of an executive agency shall comply with—

(1) any otherwise applicable provisions of Office of Management and Budget Circular A–76; and

(2) any other applicable provision of law or regulation with respect to the selection between employees of the United States and private sector sources for the performance of services.

(Added Pub. L. 107–107, div. A, title VIII, § 831(a)(1), Dec. 28, 2001, 115 Stat. 1187.)

§ 3564. Management improvement programs

In accordance with guidance provided by the Director of the Office of Management and Budget under section 3561 of this title, the head of an executive agency required to carry out a program under such section 3561 may carry out a program for improving management processes within the executive agency—

(1) to address problems that contribute directly to the occurrence of errors in the paying of contractors of the executive agency; or

(2) to improve the recovery of overpayments due to the agency.

(Added Pub. L. 107–107, div. A, title VIII, § 831(a)(1), Dec. 28, 2001, 115 Stat. 1188.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3561 of this title.

§ 3565. Relationship to authority of Inspectors General

Nothing in this subchapter shall be construed as impairing the authority of an Inspector General under the Inspector General Act of 1978 or any other provision of law.

(Added Pub. L. 107–107, div. A, title VIII, § 831(a)(1), Dec. 28, 2001, 115 Stat. 1188.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in text, is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 3566. Privacy protections

Any nongovernmental entity that, in the course of recovery auditing or recovery activity under this subchapter, obtains information that identifies an individual or with respect to which there is a reasonable basis to believe that the information can be used to identify an individual, may not disclose the information for any pur-

pose other than such recovery auditing or recovery activity and governmental oversight of such activity, unless disclosure for that other purpose is authorized by the individual to the executive agency that contracted for the performance of the recovery auditing or recovery activity.

(Added Pub. L. 107-107, div. A, title VIII, §831(a)(1), Dec. 28, 2001, 115 Stat. 1188.)

§ 3567. Definition of executive agency

Notwithstanding section 102 of this title, in this subchapter, the term “executive agency” has the meaning given that term in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

(Added Pub. L. 107-107, div. A, title VIII, §831(a)(1), Dec. 28, 2001, 115 Stat. 1188.)

CHAPTER 37—CLAIMS

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AMENDMENTS

1996—Pub. L. 104-316, title II, §202(n)(2), Oct. 19, 1996, 110 Stat. 3844, substituted “Authority to settle claims” for “Authority of the Comptroller General to settle claims” in item 3702.

Pub. L. 104-134, title III, §31001(j)(2), (o)(2), (r)(2), (t)(2), Apr. 26, 1996, 110 Stat. 1321-365, 1321-371, 1321-373, 1321-375, added items 3720B to 3720E.

1989—Pub. L. 101-203, §1(b)(2), Dec. 7, 1989, 103 Stat. 1805, substituted “investigative or law enforcement officers of the Department of Justice” for “the Federal Bureau of Investigation” in item 3724.

1986—Pub. L. 99-562, §6(b), Oct. 27, 1986, 100 Stat. 3168, added items 3732 and 3733.

1984—Pub. L. 98-369, div. B, title VI, §§2652(a)(2), 2653(a)(2), July 18, 1984, 98 Stat. 1152, 1154, added items 3720 and 3720A.

1983—Pub. L. 97-452, §1(13)(B), (16)(B), Jan. 12, 1983, 96 Stat. 2470, 2474, inserted “and application” in item 3701 and added items 3716-3719.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3516 of this title; title 20 sections 1234a, 7223h; title 42 sections 1395ccc, 5155, 12651d.

SUBCHAPTER I—GENERAL

§ 3701. Definitions and application

(a) In this chapter—

(1) “administrative offset” means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim.

(2) “calendar quarter” means a 3-month period beginning on January 1, April 1, July 1, or October 1.

(3) “consumer reporting agency” means—

(A) a consumer reporting agency as that term is defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)); or

(B) a person that, for money or on a cooperative basis, regularly—

(i) gets information on consumers to give the information to a consumer reporting agency; or

(ii) serves as a marketing agent under an arrangement allowing a third party to get the information from a consumer reporting agency.

(4) “executive, judicial, or legislative agency” means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of Government, including government corporations.

(5) “military department” means the Departments of the Army, Navy, and Air Force.

(6) “system of records” has the same meaning given that term in section 552a(a)(5) of title 5.

(7) “uniformed services” means the Army, Navy, Air Force, Marine Corps, Coast Guard, Commissioned Corps of the National Oceanic and Atmospheric Administration, and Commissioned Corps of the Public Health Service.

(8) “nontax” means, with respect to any debt or claim, any debt or claim other than a debt or claim under the Internal Revenue Code of 1986.

(b)(1) In subchapter II of this chapter and subsection (a)(8) of this section, the term “claim” or “debt” means any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to