

106TH CONGRESS
2D SESSION

H. R. 1827

IN THE SENATE OF THE UNITED STATES

MARCH 9, 2000

Received; read twice and referred to the Committee on Governmental Affairs

AN ACT

To improve the economy and efficiency of Government operations by requiring the use of recovery audits and recovery activity by Federal agencies.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION. 1. SHORT TITLE.**

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

4 **SEC. 2. FINDINGS AND PURPOSES.**

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

6 (1) Overpayments are a serious problem for
7 Federal agencies, given the magnitude and com-
8 plexity of Federal operations and documented and
9 widespread financial management weaknesses. Fed-
10 eral agency overpayments waste tax dollars and de-
11 tract from the efficiency and effectiveness of Federal
12 operations by diverting resources from their intended
13 uses.

14 (2) In private industry, overpayments to pro-
15 viders of goods and services occur for a variety of
16 reasons, including duplicate payments, pricing er-
17 rors, and missed cash discounts, rebates, or other al-
18 lowances. The identification and recovery of such
19 overpayments, commonly referred to as “recovery
20 auditing and activity”, is an established private sec-
21 tor business practice with demonstrated large finan-
22 cial returns. On average, recovery auditing and ac-
23 tivity in the private sector identify overpayment
24 rates of 0.1 percent of purchases audited and result
25 in the recovery of \$1,000,000 for each
26 \$1,000,000,000 of purchases.

1 (3) Recovery auditing and recovery activity al-
2 ready have been employed successfully in limited
3 areas of Federal activity. They have great potential
4 for expansion to many other Federal agencies and
5 activities, thereby resulting in the recovery of sub-
6 stantial amounts of overpayments annually. Limited
7 recovery audits conducted by private contractors to
8 date within the Department of Defense have identi-
9 fied errors averaging 0.4 percent of Federal pay-
10 ments audited, or \$4,000,000 for every
11 \$1,000,000,000 of payments. If fully implemented
12 within the Federal Government, recovery auditing
13 and recovery activity have the potential to recover
14 billions of dollars in Federal overpayments annually.

15 (b) PURPOSES.—The purposes of this Act are the fol-
16 lowing:

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

20 (2) To require the use of recovery audit and re-
21 covery activity by Federal agencies.

22 (3) To provide incentives and resources to im-
23 prove Federal management practices with the goal
24 of significantly reducing Federal overpayment rates
25 and other waste and error in Federal programs.

1 **SEC. 3. ESTABLISHMENT OF RECOVERY AUDIT REQUIRE-**
2 **MENT.**

3 (a) ESTABLISHMENT OF REQUIREMENT.—Chapter
4 35 of title 31, United States Code, is amended by adding
5 at the end the following:

6 “SUBCHAPTER VI—RECOVERY AUDITS

7 “§ 3561. Definitions

8 “In this subchapter, the following definitions apply:

9 “(1) AMOUNTS COLLECTED.—The term
10 ‘amounts collected’ means monies received or cred-
11 ited, by any means, including setoff, by the United
12 States Government.

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

19 “(3) DIRECTOR.—The term ‘Director’ means
20 the Director of the Office of Management and Budg-
21 et.

22 “(4) DISCLOSE.—The term ‘disclose’ means to
23 release, publish, transfer, provide access to, or other-
24 wise divulge individually identifiable information to
25 any person other than the individual who is the sub-
26 ject of the information.

1 “(5) FACIAL-DISCREPANCY PAYMENT ERROR.—

2 The term ‘facial-discrepancy payment error’—

3 “(A) except as provided in subparagraph
4 (B), means any payment error that results
5 from, is substantiated by, or is identified as a
6 result of information contained on any invoice,
7 delivery order, bill of lading, statement of ac-
8 count, or other submission given to the Govern-
9 ment by a supplier of goods or services in the
10 usual and customary conduct of business, or as
11 required by law or contract to substantiate pay-
12 ment for such goods or services, including any
13 such document submitted electronically; and

14 “(B) does not include payment errors iden-
15 tified, resulting, or supported from documents
16 that are—

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

20 “(ii) not specifically required to be
21 provided to the Government by contract,
22 law, regulation, or to substantiate pay-
23 ment; or

24 “(iii) submitted to the Government for
25 evaluative purposes prior to the award of a

1 contract, as part of the evaluation and
2 award process.

3 “(6) INDIVIDUALLY IDENTIFIABLE INFORMA-
4 TION.—The term ‘individually identifiable informa-
5 tion’ means any information, whether oral or re-
6 corded in any form or medium, that identifies the in-
7 dividual or with respect to which there is a reason-
8 able basis to believe that the information can be
9 used to identify the individual.

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

16 “(8) PAYMENT ACTIVITY.—The term ‘payment
17 activity’ means an executive agency activity that en-
18 tails making payments to vendors or other non-
19 governmental entities that provide property or serv-
20 ices for the direct benefit and use of an executive
21 agency.

22 “(9) RECOVERY AUDIT.—The term ‘recovery
23 audit’ means a financial management technique ap-
24 plied internally by Government employees, or by pri-
25 vate sector contractors, and used by executive agen-

1 cies to audit their internal records to identify facial-
2 discrepancy payment errors made by those executive
3 agencies to vendors and other entities in connection
4 with a payment activity, including facial-discrepancy
5 payment errors that result from any of the following:

6 “(A) Duplicate payments.

7 “(B) Invoice errors.

8 “(C) Failure to provide applicable dis-
9 counts, rebates, or other allowances.

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

12 “(10) RECOVERY ACTIVITY.—The term ‘recov-
13 ery activity’ means executive agency activity other-
14 wise authorized by law, including chapter 37 of this
15 title, to attempt to collect an identified overpayment.

16 “(11) RECOVERY AUDIT CONTRACTOR.—The
17 term ‘recovery audit contractor’ means any person
18 who has been hired by an executive agency to per-
19 form a recovery audit pursuant to a recovery audit
20 contract.

21 **“§ 3562. Recovery audit requirement**

22 “(a) IN GENERAL.—Except as exempted under sec-
23 tion 3565(d) of this title, the head of each executive
24 agency—

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

6 “(2) may conduct for any fiscal year recovery
7 audits and recovery activity with respect to payment
8 activities of the agency if such payment activities for
9 the fiscal year total less than \$500,000,000 (ad-
10 justed by the Director annually for inflation); and

11 “(3) may request that the Director exempt a
12 payment activity, in whole or in part, from the re-
13 quirement to conduct recovery audits under para-
14 graph (1) if the head of the executive agency deter-
15 mines and can demonstrate that compliance with
16 such requirement—

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

18 or

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

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

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

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

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

12 “(4) shall ensure that such recovery audits and
13 recovery activity are carried out consistent with the
14 standards issued by the Director under section
15 3565(b)(2) of this subchapter.

16 “(c) SCOPE OF AUDITS.—

17 “(1) IN GENERAL.—Each recovery audit of a
18 payment activity under this section shall cover pay-
19 ments made by the payment activity in the preceding
20 fiscal year, except that the first recovery audit of a
21 payment activity shall cover payments made during
22 the fiscal year in which the Government Waste Cor-
23 rections Act of 2000 is enacted, and payments made
24 in the preceding fiscal year.

1 “(2) ADDITIONAL FISCAL YEARS.—The head of
2 an executive agency may conduct recovery audits of
3 payment activities for additional preceding fiscal
4 years if determined by the agency head to be prac-
5 tical and cost-effective subject to any statute of limi-
6 tations constraints regarding recordkeeping under
7 applicable law.

8 “(d) RECOVERY AUDIT CONTRACTS.—

9 “(1) AUTHORITY TO USE CONTINGENCY CON-
10 TRACTS.—Notwithstanding section 3302(b) of this
11 title, as consideration for performance of any recov-
12 ery audit procured by an executive agency, the exec-
13 utive agency may pay the recovery audit contractor
14 an amount equal to a percentage of the total amount
15 collected by the United States as a result of overpay-
16 ments identified by the contractor in the audit.

17 “(2) ADDITIONAL FUNCTIONS OF RECOVERY
18 AUDIT CONTRACTOR.—

19 “(A) IN GENERAL.—In addition to per-
20 formance of a recovery audit, a contract for
21 such performance may authorize the recovery
22 audit contractor (subject to subparagraph (B))
23 to—

24 “(i) notify any person of possible over-
25 payments made to the person and identi-

1 fied in the recovery audit under the con-
2 tract; and

3 “(ii) respond to questions concerning
4 such overpayments.

5 “(B) LIMITATION.—A contract for per-
6 formance of a recovery audit shall not affect—

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

13 “(ii) the requirements of sections
14 3711, 3716, 3718, and 3720 of this title
15 that the head of an agency resolve dis-
16 putes, compromise, or terminate overpay-
17 ment claims, collect by setoff, and other-
18 wise engage in recovery activity with re-
19 spect to overpayments identified by the re-
20 covery audit.

21 “(3) LIMITATION ON AUTHORITY.—Nothing in
22 this subchapter shall be construed to authorize a re-
23 covery audit contractor with an executive agency—

24 “(A) to require the production of any
25 record or information by any person other than

1 an officer, employee, or agent of the executive
2 agency; and

3 “(B) to establish, or otherwise have a
4 physical presence on the property or premises
5 of any private sector entity as part of its con-
6 tractual obligations to an executive agency.

7 “(4) REQUIRED CONTRACT TERMS AND CONDI-
8 TIONS.—The head of an executive agency shall in-
9 clude in each contract for procurement of perform-
10 ance of a recovery audit requirements that the con-
11 tractor shall—

12 “(A) protect from improper use, and pro-
13 tect from disclosure to any person who is inter-
14 nal or external to the firm of the recovery audit
15 contractor and who is not directly involved in
16 the identification or recovery of overpayments,
17 otherwise confidential or proprietary business
18 information, and any financial information, that
19 may be viewed or obtained in the course of car-
20 rying out a recovery audit for an executive
21 agency;

22 “(B) provide to the head of the executive
23 agency and the Inspector General of the execu-
24 tive agency periodic reports on conditions giving
25 rise to overpayments identified by the recovery

1 audit contractor and any recommendations on
2 how to mitigate such conditions;

3 “(C) notify the head of the executive agen-
4 cy and the Inspector General of the executive
5 agency of any overpayments identified by the
6 contractor pertaining to the executive agency or
7 to another executive agency that are beyond the
8 scope of the contract; and

9 “(D) promptly notify the head of the exec-
10 utive agency and the Inspector General of the
11 executive agency of any indication of fraud or
12 other criminal activity discovered in the course
13 of the audit.

14 “(5) EXECUTIVE AGENCY ACTION FOLLOWING
15 NOTIFICATION.—The head of an executive agency
16 shall take prompt and appropriate action in response
17 to a notification by a recovery audit contractor pur-
18 suant to the requirements under paragraph (4), in-
19 cluding forwarding to other executive agencies any
20 information that applies to them.

21 “(6) CONTRACTING REQUIREMENTS.—Prior to
22 contracting for any recovery audit, the head of an
23 executive agency shall conduct a public-private cost
24 comparison process. The outcome of the cost com-
25 parison process shall determine whether the recovery

1 audit is performed in-house or by a recovery audit
2 contractor.

3 “(e) INSPECTORS GENERAL.—Nothing in this sub-
4 chapter shall be construed as diminishing the authority
5 of any Inspector General, including such authority under
6 the Inspector General Act of 1978.

7 “(f) RELATIONSHIP TO OTHER AUDIT AUTHOR-
8 ITY.—Nothing in this subchapter shall be construed as di-
9 minishing the authority granted under section 3726 of this
10 title.

11 “(g) PRIVACY PROTECTIONS.—

12 “(1) LIMITATION ON DISCLOSURE OF INDIVID-
13 UALLY IDENTIFIABLE INFORMATION.—(A) Any non-
14 governmental entity that obtains individually identi-
15 fiable information through performance of recovery
16 auditing or recovery activity under this chapter may
17 disclose that information only for the purpose of
18 such auditing or activity, respectively, and oversight
19 of such auditing or activity, unless otherwise author-
20 ized by the individual that is the subject of the infor-
21 mation.

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

1 “(2) DESTRUCTION OR RETURN OF INFORMA-
2 TION.—(A) Upon the date described in subpara-
3 graph (B), a nongovernmental entity having posses-
4 sion of individually identifiable information disclosed
5 in the course of a recovery audit or recovery activity
6 under this chapter performed by the nongovern-
7 mental entity shall destroy the information or return
8 it to the person from whom it was obtained, unless
9 another applicable law requires retention of the in-
10 formation.

11 “(B)(i) Except as provided in clause (ii), the
12 date referred to in subparagraph (A) is the date of
13 conclusion of the matter or need for which the infor-
14 mation was disclosed.

15 “(ii) If on the date referred to in clause (i) the
16 nongovernmental entity has actual notice of any
17 oversight of the recovery auditing or recovery activ-
18 ity, the date referred to in subparagraph (A) is the
19 date of the conclusion of such oversight.

20 **“§ 3563. Disposition of amounts collected**

21 “(a) IN GENERAL.—Notwithstanding section
22 3302(b) of this title, the amounts collected annually by
23 the United States as a result of recovery audits by an exec-
24 utive agency under this subchapter shall be treated in ac-
25 cordance with this section.

1 “(b) USE FOR RECOVERY AUDIT COSTS.—Amounts
2 referred to in subsection (a) shall be available to the execu-
3 tive agency—

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

6 “(2) to reimburse any applicable appropriation
7 for other recovery audit costs incurred by the execu-
8 tive agency with respect to the audit; and

9 “(3) to pay any fees authorized under chapter
10 37 of this title.

11 “(c) USE FOR MANAGEMENT IMPROVEMENT PRO-
12 GRAM.—Of the amount referred to in subsection (a), a
13 sum not to exceed 25 percent of such amount—

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

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

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

22 “(d) REMAINDER TO TREASURY.—Of the amount re-
23 ferred to in subsection (a), there shall be deposited into
24 the Treasury as miscellaneous receipts a sum equal to—

25 “(1) 50 percent of such amount; plus

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

3 “(e) LIMITATION ON APPLICATION.—

4 “(1) IN GENERAL.—This section shall not apply
5 to amounts collected through recovery audits and re-
6 covery activity to the extent that such application
7 would be inconsistent with another provision of law
8 that authorizes crediting of the amounts to a non-
9 appropriated fund instrumentality, revolving fund,
10 working capital fund, trust fund, or other fund or
11 account.

12 “(2) SUBSECTIONS (c) AND (d).—Subsections
13 (c) and (d) shall not apply to amounts collected
14 through recovery audits and recovery activity, to the
15 extent that such amounts are derived from an ap-
16 propriation or fund that remains available for obliga-
17 tion at the time the amounts are collected.

18 **“§ 3564. Management improvement program**

19 “(a) CONDUCT OF PROGRAM.—

20 “(1) REQUIRED PROGRAMS.—The head of each
21 executive agency that is required to conduct recovery
22 audits under section 3562 of this title shall conduct
23 a management improvement program under this sec-
24 tion, consistent with guidelines prescribed by the Di-
25 rector.

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

7 “(b) PROGRAM FEATURES.—In conducting the pro-
8 gram, the head of the executive agency—

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

12 “(2) may seek to reduce errors and waste in
13 other programs and operations of that executive
14 agency by improving the executive agency’s staff ca-
15 pacity, information technology, and financial man-
16 agement.

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

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

1 “(2) must retain the ability to account specifi-
2 cally for the use of amounts made available under
3 section 3563 of this title.

4 **“§ 3565. Responsibilities of the Office of Management**
5 **and Budget**

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

8 “(b) GUIDANCE.—

9 “(1) IN GENERAL.—The Director, in consulta-
10 tion with the Chief Financial Officers Council and
11 the President’s Council on Integrity and Efficiency,
12 shall issue guidance and provide support to agencies
13 in implementing the subchapter. The Director shall
14 issue initial guidance not later than 180 days after
15 the date of enactment of the Government Waste
16 Corrections Act of 2000.

17 “(2) RECOVERY AUDIT STANDARDS.—The Di-
18 rector shall include in the initial guidance under this
19 subsection standards for the performance of recovery
20 audits under this subchapter, that are developed in
21 consultation with the Comptroller General of the
22 United States and private sector experts on recovery
23 audits, including such experts who currently use re-
24 covery auditing as part of their financial manage-
25 ment procedures.

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

4 “(d) EXEMPTIONS.—

5 “(1) IN GENERAL.—The Director may exempt
6 an executive agency, in whole or in part, from the
7 requirement to conduct recovery audits under section
8 3562(a)(1) of this title if the Director determines
9 that compliance with such requirement—

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

11 or

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

14 “(2) REPORT TO CONGRESS.—The Director
15 shall promptly report the basis of any determination
16 and exemption under paragraph (1) to the Com-
17 mittee on Government Reform of the House of Rep-
18 resentatives and the Committee on Governmental
19 Affairs of the Senate.

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

22 “(A) IN GENERAL.—Unless determined
23 otherwise by the head of the agency authorized
24 to conduct a Department of Defense major sys-
25 tem acquisition program, the requirements of

1 section 3562(a) of this title shall not apply to
2 such a program procured with a cost-type con-
3 tract until the contract has become a closed
4 contract.

5 “(B) DEPARTMENT OF DEFENSE MAJOR
6 SYSTEM ACQUISITION PROGRAM DEFINED.—In
7 this paragraph, the term ‘Department of De-
8 fense major system acquisition program’ has
9 the meaning that term has in Office of Manage-
10 ment and Budget Circular A–109, as in effect
11 on the date of the enactment of the Government
12 Waste Corrections Act of 2000.

13 “(e) REPORTS.—

14 “(1) IN GENERAL.—Not later than 30 months
15 after the date of the enactment of the Government
16 Waste Corrections Act of 2000, and annually for
17 each of the 2 years thereafter, the Director shall
18 submit a report on implementation of the subchapter
19 to the President, the Committee on Government Re-
20 form of the House of Representatives, the Com-
21 mittee on Governmental Affairs of the Senate, and
22 the Committee on Appropriations of the House of
23 Representatives and of the Senate.

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

1 “(A) a general description and evaluation
2 of the steps taken by executive agencies to con-
3 duct recovery audits, including an inventory of
4 the programs and activities of each executive
5 agency that are subject to recovery audits;

6 “(B) an assessment of the benefits of re-
7 covery auditing and recovery activity, including
8 amounts identified and recovered (including by
9 administrative setoffs);

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

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

16 “(E) a description of executive agency ex-
17 penditures in the recovery audit process;

18 “(F) a description of executive agency
19 management improvement programs under sec-
20 tion 3564 of this title; and

21 “(G) any recommendations for changes in
22 executive agency practices or law or other im-
23 provements that the Director believes would en-
24 hance the effectiveness of executive agency re-
25 covery auditing.

1 **“§ 3566. General Accounting Office reports**

2 “Not later than 60 days after issuance of each report
3 under section 3565(e) of this title the Comptroller General
4 of the United States shall submit a report on the imple-
5 mentation of this subchapter to the Committee on Govern-
6 ment Reform of the House of Representatives, the Com-
7 mittee on Governmental Affairs of the Senate, the Com-
8 mittee on Appropriations of the House of Representatives
9 and of the Senate, and the Director.”.

10 (b) APPLICATION TO ALL EXECUTIVE AGENCIES.—
11 Section 3501 of title 31, United States Code, is amended
12 by inserting “and subchapter VI of this chapter” after
13 “section 3513”.

14 (c) DEADLINE FOR INITIATION OF RECOVERY AU-
15 DITS.—The head of each executive agency shall begin the
16 first recovery audit under section 3562(a)(1) title 31,
17 United States Code, as amended by this section, for each
18 payment activity referred to in that section by not later
19 than 18 months after the date of the enactment of this
20 Act.

21 (d) CLERICAL AMENDMENT.—The analysis at the be-
22 ginning of chapter 35 of title 31, United States Code, is
23 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.”.

1 **SEC. 4. STUDY.**

2 (a) IN GENERAL.—The Director of the Office of
 3 Management and Budget shall conduct a study of the ef-
 4 fects of recovery audits conducted by executive agencies,
 5 including any significant problems relating to the provi-
 6 sion of improper or inadequate notice of recovery audits
 7 to persons who are the subjects of such audits.

8 (b) REPORT.—The Director shall report to the Con-
 9 gress the findings, conclusions, and recommendations of
 10 the study under this section.

Passed the House of Representatives March 8,
 2000.

Attest:

JEFF TRANDAHL,

Clerk.