

# ACCOUNTABILITY AT THE DEPARTMENT OF DEFENSE

Mr. GRASSLEY. Mr. President, for my 85 colleagues who have served with me in past Congresses, what I am going to speak of is nothing new. It is about the lack of discipline and integrity in financial accounting at the Pentagon. This lack of integrity and discipline in accounting is the basis for the waste of the taxpayers' money that we have had at that institution for a long period of time.

But for the nine Republicans and six Democrats who are new Members of this body, I would ask them to be cognizant of the fact that what I am addressing is a crusade that I have been on for a long period of time to bring accountability to the expenditure of taxpayers' money at the Department of Defense. It is especially important for us Republicans to make sure that we are accountable for the taxpayers' money at the Defense Department where we tend to be somewhat lax, let me say, candidly. We should expect the same sort of accountability that we expect of liberals in this body when they spend money through the various domestic departments of Education, Labor, Health and Human Services and other departments of State government that maybe we Republicans ride herd on to a greater extent than we do the Defense Department.

So that subject is a breakdown of discipline and integrity in accounting at the Pentagon. When Mr. John Hamre became Comptroller of the Defense Department in 1993, I felt very hopeful. He made a personal commitment to clean up the books and to get control of the money. I really believed that he would get the job done. In fact, I have complimented him on this floor several times for making some changes—maybe not as fast as I would like to have had them made, but making changes. That is quite an accomplishment in that very bureaucratic organization.

So I have been working on him, specifically on the issue of unmatched disbursements. And, of course, as I have indicated, I thought we were making progress. Well, my confidence in Mr. Hamre has been shaken by a piece of paper that I am going to submit for the RECORD, which is floating around the Pentagon. I hope Mr. Hamre will reject this paper and thus restore my confidence. This piece of paper was brought to my attention by a concerned citizen. It is draft bill language. It is still under review, but it has lots of momentum. This language, if approved by Congress, would significantly loosen—in other words, going in the opposite direction of where we ought to be going—control over progress payments. The Department of Defense pays out about \$20 billion a year in progress payments. So we are not talking about peanuts; we are talking about big chunks of money.

The language of this draft legislation tells me that Mr. Hamre and his lieutenants in the Pentagon are ready to throw in the towel on this problem.

They have decided the accounting problem is just too big and too complicated to fix. They seem to be saying, "Let's forget about accounting today; we will try to fix it tomorrow."

The experts at the General Accounting Office are evaluating the meaning of this language, and their verdict isn't in yet. But a preliminary reading tells me that this language is bad medicine for the taxpayers. It's going to cut down on accountability at the Defense Department. It would make a bad situation worse. It would fix nothing. The DOD Inspector General has been keeping a close eye on the problem for a long time.

IG audit reports consistently show that the Department of Defense regularly violates the laws that this language would undo. This is like legalizing the crime. Instead of fixing the problem, just legalize the crime. The bureaucrats will be able to relax. The guillotine hanging over their heads to be accountable is gone. They don't have to worry about breaking the law and getting into trouble. It's OK. Go ahead and do it.

In a nutshell, Mr. President, these are the shortcomings the language would sanction:

Problem No. 1: The Department of Defense is unable to quantify and measure work progress on the factory floor.

Problem No. 2: If you can't accurately measure work performance, how do you make progress payments? You don't know how much to pay or what money to use.

Do you use fiscal year 1996 R&D funds, or do you use fiscal year 1994 procurement money? Those are some examples. But they would have much more leeway in making this decision. Less accountability.

Problem No. 3: If you don't know how to measure progress, or how much to pay, or what you are getting, you can't do normal bookkeeping, and so you are not as accountable.

This is why the Department's books are in shambles. When a Department of Defense check goes out the door, chances are it's in the wrong amount. It could be an overpayment, an underpayment, an erroneous payment, or even a fraudulent payment. I have documented proof that a number of people have literally stolen millions of dollars through this lax process.

Without accurate bookkeeping, it is impossible to control the money. The Pentagon check writing machine is stuck on automatic pilot, and nobody seems to know how to stop it.

This language would lock the check-writing machine on autopilot.

Mr. President, the Pentagon bureaucrats want to create a pool of money down at the business end of the DOD pipeline—where money is disbursed. They would do this by breaking down the integrity of the appropriation accounts established in law. That would

allow them to make payments without regard to statutory law and the Constitution, as they once did before we abolished the memorable "M" account slush funds. The "M" accounts were closed by Congress in 1990.

This language, then, in this proposed draft would subvert the appropriations process. Every member of the Appropriations Committee ought to be concerned about this. Each year, that committee takes the DOD budget and carefully segregates the money in many different accounts. The amounts provided for each account are specified by the law. Under the law, the money must be expended for the purpose for which it was appropriated in the times allowed.

DOD bureaucrats are thumbing their noses at the appropriations process and the law. The IG tells us they do it with regularity—but at some risk.

Well, this language would remove all of that risk. It would authorize them to tear down the account barriers so carefully put up by the Appropriations Committee. If we are going to protect the taxpayers' money, if we are going to make the Department of Defense accountable, that's not right.

The Department of Defense should not be authorized to merge appropriation accounts downstream at the contract level, unless they are first merged upstream by Congress in law.

If the money is to be pooled at the contract level, then Congress must make some kind of corresponding adjustment in the way those moneys are appropriated. Otherwise, the appropriations process might become irrelevant down the road.

Mr. President, as I close, I want to say that I have already brought this language to the attention of my friend from Alaska, Senator STEVENS, the distinguished chairman of the Appropriations Committee. I have found him so many other times so respectful of the judgments that have been presented to him and his cooperation on other committees where he can raise very important questions. So I don't have any doubt but what this concerns Senator STEVENS, and Senator STEVENS will look into it and find a solution, but not let the Defense Department get away with their irresponsible draft language that would give them an open door to doing just about whatever they want to do.

I have asked Senator STEVENS to urge Mr. Hamre to reconsider this proposal and find some other way to fix the problem. I also ask my friend, John Hamre, to carry out his responsibilities under the Chief Financial Officers' Act of 1990, the CFO Act. Under that act, he is supposed to be tightening internal controls and improving financial accounting.

This language would move accounting in the opposite direction—the wrong direction. It would loosen internal controls and set accounting aside until some unknown future date.

Mr. President, this draft language floating around the Defense Department at this point needs close scrutiny. It really worries me, and it should worry the taxpayers because there is going to be less accountability of bureaucrats, who are responsible for spending the money, to the taxpayers if we would change existing law.

I ask unanimous consent that the document I referred to earlier be printed in the RECORD.

There being no objection the material was ordered to be printed in the RECORD, as follows:

EXCERPT FROM DRAFT BILL

**SEC. . ACCOUNTING FOR CONTRACT FINANCING PAYMENTS.**

Section 2307 of title 10, United States Code, is amended by adding at the end the following new subsection (i):

“(i) **ACCOUNTING FOR PAYMENTS.**—Payments under this section based upon a contract that is funded by multiple appropriations or multiple subdivisions within one appropriation may be paid from any one or more of the appropriations or subdivisions thereof funding the contract. However, proper accounting adjustments shall be made to conform to the requirements of subsection (a) of section 1301 of title 31 upon final payment for the items or services delivered and accepted in performance of the contract.”.

SECTIONAL ANALYSIS

This proposal would authorize the Secretary of Defense, when making contract financing payments for a contract funded by multiple appropriations or multiple subdivisions within an appropriation, to charge any one or more of the appropriations or subdivisions thereof. The benefit of this section under 10 U.S.C. § 2307, “Contract Financing” is to the temporary spreading of payments for work-in-process costs across appropriations funding the contract. This legislative relief will permit us the flexibility to exercise our stewardship over the public moneys more efficiently and effectively.

This section remedies a long standing and on-going problem in the current contract payment process that attempts to assign contract financing payments to a specific appropriation when the process is not capable of efficiently providing the need information. The Department of Defense (DOD) uses the contract financing authority at 10 U.S.C. § 2307, as implemented by Federal Acquisition Regulation Part 32, for many of its contracts. These provisions authorize the disbursement of funds to a contractor prior to the acceptance of goods and services. Contract financing includes advance, partial payments under cost reimbursable contracts and progress payments. Pursuant to this authority, contractors receive progress payments from DOD to finance work performed under DOD contracts. These payments for work-in-process may be for specific work or tasks, or for production line setup and equipment or tooling for the entire contract and in some cases are not tied to specific work or tasks. The contracts are often funded with multiple and different appropriations.

In order to comply with 31 U.S.C. § 1301, which requires that appropriations be applied only for the purpose for which they were made, payments based upon the contractor's work-in process costs must be identified to specific work or tasks and the related appropriation funding the effort. However, given that the nature of the cost incurred during the work-in-process period may be funded by multiple appropriations and therefore, cannot be efficiently identified to a specific appropriation, compliance

with 31 U.S.C. § 1301 is difficult and time consuming. Furthermore, it is not cost effective or realistic to require additional government or contractor information or effort to determine the specific chargeable appropriations while making payments for work-in-process costs and for costs which are essentially a means of temporary financing for the contractor. In fact, this additional administrative work to develop the information would not significantly improve the precision of the estimate but would further increase the contractor and taxpayer costs. Currently, unless the specific line item and appropriation are identified to the payment office, contract financing payments are spread pro-rata across the appropriations funding the contract. During the work-in-process period, adequate controls exist to ensure that no appropriation is charged more than is available in the appropriation and, furthermore no payment is made without receipt of a proper government approved authorization to make the payment against the proper contract. The problem, however, is that this method is not in compliance with 31 U.S.C. § 1301.

The enactment of this bill permit this accounting flexibility when viewed in conjunction with 31 U.S.C. § 1301. The effect would be to provide a specific statutory exception to the requirements of 31 U.S.C. § 1301 until payment is made.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

**FAMILY FARMERS AND THE ALTERNATIVE MINIMUM TAX**

Mr. DORGAN. Mr. President, while the Senator from Iowa is here, I wanted to comment on some remarks he made at the start of his presentation.

As the Presiding Officer and other Members may know, Senator GRASSLEY and I have cosponsored and introduced last week a piece of legislation dealing with this current Internal Revenue Service problem on the alternative minimum tax that is going to affect a lot of farmers in our part of the country.

I agree with the Senator from Iowa that the news that came out of the Internal Revenue Service this morning is indeed good news. The Internal Revenue Service, this morning, has indicated that it will, in effect, not enforce in 1996 a provision that it was intending to enforce, which we believe is a misinterpretation of tax law. What IRS was intending to do, in effect, on the alternative minimum tax was to force a number of family farmers to pay taxes on income they have not yet received.

We do not believe Congress ever intended for that kind of enforcement to occur, or for that interpretation of tax law to exist. We think the IRS was wrong.

The Senator from Iowa and I have repeatedly contacted the administration. I have visited with the Secretary of the Treasury and others to make this case. But, in any event, on a bipartisan basis, as the Senator from Iowa and I introduced legislation with 54 cosponsors—the Republican leader the Democratic leader are on the bill—it is clear, or would have been clear, it seems to

me, to the IRS and Treasury that this legislation will pass in this Congress and in effect say to the IRS that your interpretation of the law is wrong.

I think the IRS has, to its credit, understood now that to enforce in this year and put a fair number of farmers at risk—asking them to pay taxes on income they have not yet received—would be really a travesty of justice. The IRS today has taken the position that they will allow farmers to file tax returns in 1996 as they have in the past with respect to deferred contract commodity sales. And I commend them for taking that position.

I appreciate the cooperation of the IRS and the Treasury Secretary on this issue. It is the right thing to do. It is what the Senator from Iowa and I and others have been advocating they do.

So we have made some incremental progress today. That ought to be good news for farmers who have been worried about this issue of how the IRS will enforce and treat and audit the deferred contract commodity sales.

I just wanted to follow the remarks of the Senator from Iowa to say that I am pleased to work with him on it. It is an example of a bipartisan effort to fix a problem, and we have at least gone part of the way to fix this problem.

**ORDER OF PROCEDURE**

Mr. DORGAN. Mr. President, I would like to use 10 minutes of my time, and then I would like to yield 10 minutes of the time under my control to the Senator from South Carolina, Senator HOLLINGS.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. DORGAN, Mr. HOLLINGS, and Mr. FORD pertaining to the introduction of Senate Joint Resolution 12 are located in today's RECORD under “Statements on Introduced Bills and Joint Resolutions.”)

Mr. REID addressed the Chair.

**EXTENSION OF MORNING BUSINESS**

Mr. REID. Mr. President, I ask unanimous consent that the morning hour be extended until I am able to speak for 10 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I thank the Chair.

(The remarks of Mr. REID pertaining to the introduction of S.J. Res. 12 are located in today's RECORD under “Statements on Introduced Bills and Joint Resolutions.”)

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

(The remarks of Mr. REID pertaining to the introduction of S. 206 are located in today's RECORD under “Statements on Introduced Bills and Joint Resolutions.”)

Mr. HOLLINGS. Mr. President, I suggest the absence of a quorum.