

GOVERNMENT WASTE CORRECTIONS ACT OF 1999

NOVEMBER 17, 1999.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BURTON of Indiana, from the Committee on Government Reform, submitted the following

R E P O R T

[To accompany H.R. 1827]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform, to whom was referred the bill (H.R. 1827) to improve the economy and efficiency of Government operations by requiring the use of recovery audits by Federal agencies, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Government Waste Corrections Act of 1999".

SEC. 2. FINDINGS AND PURPOSES.

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

(1) Overpayments are a serious problem for Federal agencies, given the magnitude and complexity of Federal operations and documented and widespread financial management weaknesses. Federal agency overpayments waste tax dollars and detract from the efficiency and effectiveness of Federal operations by diverting resources from their intended uses.

(2) In private industry, overpayments to providers of goods and services occur for a variety of reasons, including duplicate payments, pricing errors, and missed cash discounts, rebates, or other allowances. The identification and recovery of such overpayments, commonly referred to as "recovery auditing and activity", is an established private sector business practice with demonstrated large financial returns. On average, recovery auditing and activity in the private sector identify overpayment rates of 0.1 percent of purchases audited and result in the recovery of \$1,000,000 for each \$1,000,000,000 of purchases.

(3) Recovery auditing and recovery activity already have been employed successfully in limited areas of Federal activity. They have great potential for expansion to many other Federal agencies and activities, thereby resulting in the recovery of substantial amounts of overpayments annually. Limited recovery au-

dits conducted by private contractors to date within the Department of Defense have identified errors averaging 0.4 percent of Federal payments audited, or \$4,000,000 for every \$1,000,000,000 of payments. If fully implemented within the Federal Government, recovery auditing and recovery activity have the potential to recover billions of dollars in Federal overpayments annually.

(b) PURPOSES.—The purposes of this Act are the following:

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

(2) To require the use of recovery audit and recovery activity by Federal agencies.

(3) To provide incentives and resources to improve Federal management practices with the goal of significantly reducing Federal overpayment rates and other waste and error in Federal programs.

SEC. 3. ESTABLISHMENT OF RECOVERY AUDIT REQUIREMENT.

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

“SUBCHAPTER VI—RECOVERY AUDITS

“§ 3561. Definitions

“In this subchapter, the following definitions apply:

“(1) DIRECTOR.—The term ‘Director’ means the Director of the Office of Management and Budget.

“(2) DISCLOSE.—The term ‘disclose’ means to release, publish, transfer, provide access to, or otherwise divulge individually identifiable information to any person other than the individual who is the subject of the information.

“(3) INDIVIDUALLY IDENTIFIABLE INFORMATION.—The term ‘individually identifiable information’ means any information, whether oral or recorded in any form or medium, that identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

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

“(5) PAYMENT ACTIVITY.—The term ‘payment activity’ means an executive agency activity that entails making payments to vendors or other nongovernmental entities that provide property or services for the direct benefit and use of an executive agency.

“(6) RECOVERY AUDIT.—The term ‘recovery audit’ means a financial management technique used to identify overpayments made by executive agencies with respect to vendors and other entities in connection with a payment activity, including overpayments that result from any of the following:

“(A) Duplicate payments.

“(B) Pricing errors.

“(C) Failure to provide applicable discounts, rebates, or other allowances.

“(D) Inadvertent errors.

“(7) RECOVERY ACTIVITY.—The term ‘recovery activity’ means activity otherwise authorized by law, including chapter 37 of this title, to attempt to collect an identified overpayment—

“(A) within 180 days after the date the overpayment is identified; and

“(B) through established professional practices.

“§ 3562. Recovery audit requirement

“(a) IN GENERAL.—Except as exempted by the Director under section 3565(d) of this title, the head of each executive agency—

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

“(2) may conduct for any fiscal year recovery audits and recovery activity with respect to payment activities of the agency if such payment activities for the fiscal year total less than \$500,000,000 (adjusted by the Director annually for inflation).

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

“(1) shall consult and coordinate with the Chief Financial Officer and the Inspector General of the agency;

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

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

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

“(c) SCOPE OF AUDITS.—(1) Each recovery audit of a payment activity under this section shall cover payments made by the payment activity in a fiscal year, except that the first recovery audit of a payment activity shall cover payments made during the 2 consecutive fiscal years preceding the date of the enactment of the Government Waste Corrections Act of 1999.

“(2) The head of an executive agency may conduct recovery audits of payment activities for additional preceding fiscal years if determined by the agency head to be practical and cost-effective.

“(d) RECOVERY AUDIT CONTRACTS.—

“(1) AUTHORITY TO USE CONTINGENCY CONTRACTS.—Notwithstanding section 3302(b) of this title, as consideration for performance of any recovery audit procured by an executive agency, the executive agency may pay the contractor an amount equal to a percentage of the total amount collected by the United States as a result of overpayments identified by the contractor in the audit.

“(2) ADDITIONAL FUNCTIONS OF CONTRACTOR.—(A) In addition to performance of a recovery audit, a contract for such performance may authorize the contractor (subject to subparagraph (B)) to—

“(i) notify any person of possible overpayments made to the person and identified in the recovery audit under the contract; and

“(ii) respond to questions concerning such overpayments.

“(B) A contract for performance of a recovery audit shall not affect—

“(i) the authority of the head of an executive agency under the Contract Disputes Act of 1978 and other applicable laws, including the authority to initiate litigation or referrals for litigation; or

“(ii) the requirements of sections 3711, 3716, 3718, and 3720 of this title that the head of an agency resolve disputes, compromise or terminate overpayment claims, collect by setoff, and otherwise engage in recovery activity with respect to overpayments identified by the recovery audit.

“(3) LIMITATION ON AUTHORITY.—Nothing in this subchapter shall be construed to authorize a contractor with an executive agency to require the production of any record or information by any person other than an officer, employee, or agent of the executive agency.

“(4) REQUIRED CONTRACT TERMS AND CONDITIONS.—The head of an executive agency shall include in each contract for procurement of performance of a recovery audit requirements that the contractor shall—

“(A) protect from disclosure otherwise confidential business information and financial information;

“(B) provide to the head of the executive agency and the Inspector General of the executive agency periodic reports on conditions giving rise to overpayments identified by the contractor and any recommendations on how to mitigate such conditions;

“(C) notify the head of the executive agency and the Inspector General of the executive agency of any overpayments identified by the contractor pertaining to the executive agency or to another executive agency that are beyond the scope of the contract; and

“(D) promptly notify the head of the executive agency and the Inspector General of the executive agency of any indication of fraud or other criminal activity discovered in the course of the audit.

“(5) EXECUTIVE AGENCY ACTION FOLLOWING NOTIFICATION.—The head of an executive agency shall take prompt and appropriate action in response to a notification by a contractor pursuant to the requirements under paragraph (4), including forwarding to other executive agencies any information that applies to them.

“(6) CONTRACTING REQUIREMENTS.—Prior to contracting for any recovery audit, the head of an executive agency shall conduct a public-private cost comparison process. The outcome of the cost comparison process shall determine whether the recovery audit is performed in-house or by a contractor.

“(e) INSPECTORS GENERAL.—Nothing in this subchapter shall be construed as diminishing the authority of any Inspector General, including such authority under the Inspector General Act of 1978.

“(f) PRIVACY PROTECTIONS.—

“(1) LIMITATION ON DISCLOSURE OF INDIVIDUALLY IDENTIFIABLE INFORMATION.—(A) Any nongovernmental entity that obtains individually identifiable information through performance of recovery auditing or recovery activity under this chapter may disclose that information only for the purpose of such auditing or activity, respectively, and oversight of such auditing or activity, unless otherwise authorized by the individual that is the subject of the information.

“(B) Any person that violates subparagraph (A) shall be liable for any damages (including nonpecuniary damages, costs, and attorneys fees) caused by the violation.

“(2) DESTRUCTION OR RETURN OF INFORMATION.—Upon the conclusion of the matter or need for which individually identifiable information was disclosed in the course of recovery auditing or recovery activity under this chapter performed by a nongovernmental entity, the nongovernmental entity shall either destroy the individually identifiable information or return it to the person from whom it was obtained, unless another applicable law requires retention of the information.

“§ 3563. Disposition of amounts collected

“(a) IN GENERAL.—Notwithstanding section 3302(b) of this title, the amounts collected annually by the United States as a result of recovery audits by an executive agency under this subchapter shall be treated in accordance with this section.

“(b) USE FOR RECOVERY AUDIT COSTS.—Amounts referred to in subsection (a) shall be available to the executive agency—

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

“(2) to reimburse any applicable appropriation for other recovery audit costs incurred by the executive agency with respect to the audit.

“(c) USE FOR MANAGEMENT IMPROVEMENT PROGRAM.—Of the amount referred to in subsection (a), a sum not to exceed 25 percent of such amount—

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

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

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

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

“(1) 50 percent of such amount; plus

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

(c).

“(e) LIMITATION ON APPLICATION.—

“(1) IN GENERAL.—This section shall not apply to amounts collected through recovery audits and recovery activity to the extent that such application would be inconsistent with another provision of law that authorizes crediting of the amounts to a nonappropriated fund instrumentality, revolving fund, working capital fund, trust fund, or other fund or account.

“(2) SUBSECTIONS (c) AND (d).—Subsections (c) and (d) shall not apply to amounts collected through recovery audits and recovery activity, to the extent that such amounts are derived from an appropriation or fund that remains available for obligation at the time the amounts are collected.

“§ 3564. Management improvement program

“(a) CONDUCT OF PROGRAM.—

“(1) REQUIRED PROGRAMS.—The head of each executive agency that is required to conduct recovery audits under section 3562 of this title shall conduct a management improvement program under this section, consistent with guidelines prescribed by the Director.

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

“(b) PROGRAM FEATURES.—In conducting the program, the head of the executive agency—

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

“(2) may seek to reduce errors and waste in other executive agency programs and operations by improving the executive agency’s staff capacity, information technology, and financial management.

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

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

“(2) must retain the ability to account specifically for the use of amounts made available under section 3563 of this title.

“§ 3565. Responsibilities of the Office of Management and Budget

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

“(b) GUIDANCE.—

“(1) IN GENERAL.—The Director, in consultation with the Chief Financial Officers Council and the President’s Council on Integrity and Efficiency, shall issue guidance and provide support to agencies in implementing the subchapter. The Director shall issue initial guidance not later than 180 days after the date of enactment of the Government Waste Corrections Act of 1999.

“(2) RECOVERY AUDIT STANDARDS.—The Director shall include in the initial guidance under this subsection standards for the performance of recovery audits under this subchapter, that are developed in consultation with the Comptroller General of the United States and private sector experts on recovery audits.

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

“(d) EXEMPTIONS.—

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

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

“(B) would not be cost-effective.

“(2) REPORT TO CONGRESS.—The Director shall promptly report the basis of any determination and exemption under paragraph (1) to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate.

“(e) REPORTS.—

“(1) IN GENERAL.—Not later than 1 year after the date of the enactment of the Government Waste Corrections Act of 1999, and annually for each of the 2 years thereafter, the Director shall submit a report on implementation of the subchapter to the President, the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Committee on Appropriations of the House of Representatives and of the Senate.

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

“(A) a general description and evaluation of the steps taken by executive agencies to conduct recovery audits, including an inventory of the programs and activities of each executive agency that are subject to recovery audits;

“(B) an assessment of the benefits of recovery auditing and recovery activity, including amounts identified and recovered (including by administrative setoffs);

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

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

“(E) a description of executive agency expenditures in the recovery audit process;

“(F) a description of executive agency management improvement programs under section 3564 of this title; and

“(G) any recommendations for changes in executive agency practices or law or other improvements that the Director believes would enhance the effectiveness of executive agency recovery auditing.

“§ 3566. General Accounting Office reports

“Not later than 60 days after issuance of each report under section 3565(e) of this title, the Comptroller General of the United States shall submit a report on the implementation of this subchapter to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate,

the Committee on Appropriations of the House of Representatives and of the Senate, and the Director.”

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

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

(d) CLERICAL AMENDMENT.—The analysis at the beginning of chapter 35 of title 31, United States Code, is amended by adding at the end the following:

“SUBCHAPTER VI—RECOVERY AUDITS

“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.”

Amend the title so as to read:

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

I. SHORT SUMMARY OF LEGISLATION

H.R. 1827, the “Government Waste Corrections Act of 1999,” amends chapter 35 of title 31, United States Code, to require Federal agencies to perform recovery audits if their direct purchases for goods and services total \$500 million or more per fiscal year. Agencies that must undertake recovery auditing would also be required to institute a management improvement program to address underlying problems of their payment systems.

II. BACKGROUND AND NEED FOR LEGISLATION

Overpayments in the Federal Government

The Federal Government expends hundreds of billions of dollars annually for a variety of grants, payment transfers, and procurement of goods and services. In the context of this spending, improper payments by Federal agencies and departments are a serious problem. At a February 10, 1999 full Committee hearing on government waste and mismanagement, Inspectors General from three (3) major Federal departments—Health and Human Services, Housing and Urban Development, and Agriculture—testified about their major program and management problems, among them, erroneous payments.¹ It is estimated that a total of about \$15 billion was erroneously paid out of the Medicare, Food Stamps, and Housing programs in one year. Close to \$13 billion of that was in the Medicare program alone.

Other Federal departments and agencies are also at-risk for erroneous payments. In a recent report on overpayments produced at the request of Senate Governmental Affairs Committee Chairman Fred Thompson, the General Accounting Office (GAO) referred to previous audits that had found improper payments at the Department of Defense (DOD), the Department of Education, and the In-

¹Waste and Fraud in Federal Government Programs, Hearings Before the House Government Reform Committee, 106th Cong., 1st Sess. (1999).

ternal Revenue Service.² At DOD, between the years of 1994 and 1998, Defense contractors voluntarily returned \$984 million that had been overpaid as a result of inadvertent errors, such as paying the same invoice twice.³ With over \$130 billion annually in purchases involving contractors, the \$984 million figure likely represents just a fraction of the erroneous payments DOD makes and does not include overpayments made due to fraud or abuse.

Most agencies do not identify, estimate and report the nature and extent of their improper payments on their own,⁴ and there is no legislative requirement that they do so. Thus, most Federal overpayments go undetected, leaving the extent of the problem unknown. For nine agencies that have reported their estimates of erroneous payments, the total is \$19.1 billion for fiscal year 1998.⁵ It is unclear of this amount what constitutes inadvertent errors versus errors due to fraud and abuse. The sheer size and complexity of Federal operations, along with documented, widespread financial management weaknesses are at the root of the problem with inadvertent erroneous payments. Ultimately, the problem wastes tax dollars and detracts from the efficiency and effectiveness of Federal operations by diverting resources from their intended uses.

H.R. 1827 represents the first significant step taken to deal with the tens of billions of dollars in Federal overpayments made each year. The legislation is modeled upon an established private sector practice successful for identifying and recovering inadvertent overpayments. The practice is commonly known as “recovery auditing.”

Recovery auditing in the private sector

Inadvertent overpayments made by any entity—from a personal household, to a large corporation—are a fact of life. No matter how fine-tuned the financial management system, overpayments are bound to occur at one time or another. The larger the volume of purchases, the greater the likelihood of overpayments. Recovery auditing is a procedure aimed directly at large volumes of payments to identify and recover overpayments, and is a common practice in the private sector. It is not a “one-time” audit in the traditional sense of the word, but an on-going, systematic procedure—a financial management practice.

The use of recovery auditing is not a sign of poor financial management. The majority of Fortune 500 companies use recovery auditing. There is a general recognition that when you have high volumes of purchases, there is no way to avoid overpayments. Recovery auditing is simply an acknowledged, effective method for maximizing the financial performance of an organization.

In the course of a typical recovery audit, all purchases and payment transaction media is reviewed—usually involving the use of proprietary software—to identify where overpayments may have occurred. These potential overpayments are then further researched for verification to assemble all supporting documentation.

²Financial Management: Increased Attention Needed to Prevent Billions in Improper Payments, GAO/AIMD-00-10, United States General Accounting Office (1999).

³Ibid.

⁴Ibid.

⁵Ibid.

Then identified overpayments are submitted to the client for review and approval. Subsequently, the vendor is notified via a 30-day letter and asked to reply. Overpayments are usually recovered through direct payment or administrative offset.

In the private sector, recovery audits are usually performed by a specialist under a contingency fee contract arrangement, whereby the specialist is paid an agreed-upon percentage of the overpayments identified and recouped. Under this type of arrangement, there is no risk to the entity contracting for a recovery audit. All costs to conduct the audit are borne by the auditor. As overpayments are found and recovered, the client and the auditor share in the proceeds. The average recovery rate for overpayments in the private sector is about \$1 million for every \$1 billion in purchases.⁶

Recovery auditing in the Federal Government to date

Recovery auditing has been implemented successfully in the Army and Air Force Exchange Systems (AAFES) within DOD since 1983.⁷ AAFES makes purchases of about \$5 billion per year with the most recently completed recovery audit (1998) producing close to \$25 million in recovered monies.⁸ Over the past several years, recovery auditing has also been piloted at DOD's Defense Supply Center in Philadelphia (DSCP) at the direction of Congress. The pilot program began in 1996 when DSCP competitively contracted with the Profit Recovery Group (PRG). The audit base was \$7.2 billion in payments to vendors from fiscal years 1993 through 1995.⁹ While the project is not completed, potential overpayments were originally estimated at about \$27.3 million, proof that recovery auditing was a cost-effective commercial practice for DSCP.¹⁰ In fact, DOD was directed to continue and expand the recovery audit demonstration program in this year's defense reauthorization legislation. Based on his experience with recovery auditing contracts at DOD, the Executive Vice President of PRG, Paul Dinkins, estimates that the recovery rate within all DOD programs is about three times that of the private sector, or \$3 million for every \$1 billion.¹¹

⁶The Government Waste Corrections Act: Hearings on H.R. 1827 Before the House Government Reform Subcommittee on Government Management, Information, and Technology, 106th Cong., 1st Sess. (1999) (Testimony of Paul Dinkins, Executive Vice President, Profit Recovery Group International).

⁷The Government Waste Corrections Act: Hearings on H.R. 1827 Before the House Government Reform Subcommittee on Government Management, Information, and Technology, 106th Cong., 1st Sess. (1999) (Testimony of Gerald R. Peterson, Chief, Accounts Payable Division, Army and Air Force Exchange Service).

⁸The Government Waste Corrections Act: Hearings on H.R. 1827 Before the House Government Reform Subcommittee on Government Management, Information, and Technology, 106th Cong., 1st Sess. (1999) (Testimony of Paul Dinkins, Executive Vice President, Profit Recovery Group International).

⁹The Government Waste Corrections Act: Hearings on H.R. 1827 Before the House Government Reform Subcommittee on Government Management, Information, and Technology, 106th Cong., 1st Sess. (1999) (Testimony of Gerald R. Peterson, Chief, Accounts Payable Division, Army and Air Force Exchange Service).

¹⁰Ibid.

¹¹The Government Waste Corrections Act: Hearings on H.R. 1827 Before the House Government Reform Subcommittee on Government Management, Information, and Technology, 106th Cong., 1st Sess. (1999) (Testimony of Paul Dinkins, Executive Vice President, Profit Recovery Group International).

III. LEGISLATIVE HEARINGS AND COMMITTEE ACTIONS

H.R. 1827 was introduced on May 17, 1999 by the Honorable Dan Burton (R-IN), Chairman of the Government Reform Committee. Original co-sponsors were Majority Leader Dick Armey (R-TX), Rep. Pete Sessions (R-TX), and Rep. Doug Ose (R-CA). H.R. 1827 was referred to the Committee on Government Reform, then referred to the Subcommittee on Government Management, Information, and Technology on May 25, 1999. The subcommittee held a legislative hearing on June 29, 1999. A business meeting was held by the subcommittee on July 21, 1999, at which time the Chairman, Rep. Steve Horn (R-CA), offered the measure as an amendment in the nature of a substitute to H.R. 1827. It was ordered favorably reported to the full Committee by voice vote.

On November 10, 1999, the full Committee met to consider H.R. 1827. Chairman Dan Burton offered an amendment in the nature of a substitute. An amendment from Mr. Turner was accepted to require privacy protections for individually identifiable information. Another amendment, offered by Mr. Waxman, was accepted. It requires that agencies conduct public-private cost comparisons in order to decide whether to conduct recovery audits in-house or contract for them. The Committee approved the amendment in the nature of a substitute, as amended, by voice vote. The Committee then favorably reported the Act, as amended, to the House by voice vote.

IV. COMMITTEE HEARINGS AND WRITTEN TESTIMONY

On June 29, 1999, the Subcommittee on Government Management, Information, and Technology held formal hearings on H.R. 1827. Witnesses at the hearing were: David Walker, Comptroller General of the United States, General Accounting Office; Deidre Lee, Acting Deputy Director of Management and Administrator of the Office of Federal Procurement Policy, Office of Management and Budget; George H. Allen, Deputy Commander, Defense Supply Center Philadelphia; Gerald R. Peterson, Chief, Accounts Payable Division, Army and Air Force Exchange Service; Michelle Snyder, Director, Financial Management Office, and Chief Financial Officer, Health Care Financing Administration; Paul Dinkins, Executive Vice President, The Profit Recovery Group International, Inc.; Douglas R. Wilwerding, Chief Executive Officer and President, Omnium Worldwide, Inc.; Terrance Lyons, Director of Accounting, the Walgreen Company; Stephen R. Booma, private consultant; Robert Koehler, American Logistics Association.

It is important to recognize that the legislation under discussion at the June 29, 1999 subcommittee hearing contained substantial differences from that which subsequently passed the full Committee. In particular, the legislation under consideration at this hearing would have applied the recovery audit mandate to all government programs (discretionary and entitlement) whose payment activities totaled \$10 million or more annually. The Office of Management and Budget (OMB) was directed to focus on five model agencies doing recovery auditing to track and report on best practices. The legislation at that time also contained set percentage amounts for the distribution of recovered overpayments—25 per-

cent would have been available for payment to the outside recovery auditor; 25 percent would have been available to the agency for financial and program management improvements; 25 percent would be available to the program from which the overpayment originated; and 25 percent would have had to be returned to the Treasury. Another provision, now no longer there, would have made Federal employees who helped identify and correct significant agency problems eligible for large bonuses. Each of these provisions is now different from, or no longer part of, the current legislation.

Comptroller General David Walker's (GAO) testimony discussed the dimensions of the overpayment problem in the Federal Government—the significant financial systems' weaknesses, problems with fundamental record keeping and financial reporting, incomplete documentation, weak internal controls, and the inability to determine the full extent of improper payments.¹² He testified that H.R. 1827 was a positive step in the effort to identify, recover and reduce overpayments in the government.¹³ The strengths of the bill included the incentives for agencies to improve Federal management practices; the requirement for recovery audit contractors to provide periodic reports on how to mitigate overpayment problems; and the option for agencies to perform recovery auditing in-house, by contract, or using a combination thereof.¹⁴ He stressed the importance of the latter provision to an agency's ability to pick the low-hanging fruit before turning to contingency fee arrangements on the outside.¹⁵

Mr. Walker recommended that the Committee re-examine the bill's provision of financial incentives to the agencies, and consider a more substantial portion of the collected overpayments be returned to the Treasury.¹⁶ According to GAO, the three keys to successful execution of governmentwide recovery auditing are: (1) meaningful incentives for agencies to want to participate in the program; (2) adequate safeguards to ensure achievement of congressional intent, including proper use of appropriations; and (3) assuring transparency in the conduct of the program.¹⁷

Dierdre Lee, acting Deputy Director for Management at OMB, testified on behalf of the administration.¹⁸ She indicated that the administration's focus was on paying correctly at the front end.¹⁹ The more promising provisions in H.R. 1827 she said included paying for audit recovery services out of proceeds, gains sharing for agencies to improve financial management, identifying management improvement opportunities, and rewarding employee performance.²⁰

¹²The Government Waste Corrections Act: Hearings on H.R. 1827 Before the House Government Reform Subcommittee on Government Management, Information, and Technology, 106th Cong., 1st Sess. (1999) (Testimony of David Walker, Comptroller of the United States, General Accounting Office).

¹³Ibid.

¹⁴Ibid.

¹⁵Ibid.

¹⁶Ibid.

¹⁷Ibid.

¹⁸The Government Waste Corrections Act: Hearings on H.R. 1827 Before the House Government Reform Subcommittee on Government Management, Information, and Technology, 106th Cong., 1st Sess. (1999) (Testimony of Dierdre Lee, Acting Deputy Director of Management and Administrator of the Office of Federal Procurement Policy, Office of Management and Budget).

¹⁹Ibid.

²⁰Ibid.

Problems that Ms. Lee identified with H.R. 1827 included (1) the threshold amount of \$10 million (too low); (2) the application to entitlement and benefit programs (most of which she indicated already had statutory provisions for identifying and recovering overpayments), and (3) the return of up to 25 percent of collected amounts to agency programs instead of the Treasury.²¹

George Allen, Deputy Commander of the Defense Supply Center of Philadelphia testified regarding that entity's experience as the test site for the DOD demonstration project for recovery auditing.²² He indicated that of an audit base of \$7.2 billion in payments to vendors over a three-year period, \$27.3 million was identified as potential overpayments.²³ Those overpayments included duplicate payments, interest paid in error, discounts offered but not taken, overcharges, and breeches of the price warranty provisions in our contracts.²⁴ While all of the \$27.3 million had not been collected, Mr. Allen described other benefits to the program, including more attention to contract terms and conditions, the identification of systemic problems, and the realization for closer oversight of the payment function itself.²⁵ He testified also that the 1998 Defense Authorization Act directed that recovery auditing be expanded to all Defense Working Capitol Fund activities using contingency fee arrangements with private recovery auditors.²⁶

Gerald Peterson, Chief of Accounts Payable at the Army and Air Force Exchange Service (AAFES) testified that it currently has a primary and a secondary contract with two different recovery audit firms.²⁷ In addition, AAFES has instituted an in-house recovery effort to detect duplicate payments and recover missed discounts and outstanding credits.²⁸ Mr. Peterson indicated that a successful recovery audit program involves (1) good partnership with agency and audit firm and respect for suppliers; (2) development of an in-house recovery program to augment the commercial recovery; (3) a compression of the audit cycle so that payment errors are found in a timely manner; and (4) learning from the recovery audit firm what you might be able to recover in-house.²⁹

According to Mr. Peterson, the problems with H.R. 1827 included (1) caps on percentages under contingency fee arrangements with contractors; (2) the disposition of collected amounts with regard to non-appropriated fund instrumentalities; and (3) reporting requirements to OMB.³⁰

Michelle Snyder, Chief Financial Officer of the Health Care Financing Administration (HCFA) which runs the Medicare program, testified that her agency's efforts have focused on the prevention of

²¹ Ibid.

²² The Government Waste Corrections Act: Hearings on H.R. 1827 Before the House Government Reform Subcommittee on Government Management, Information, and Technology, 106th Cong., 1st Sess. (1999) (Testimony of George H. Allen, Deputy Commander, Defense Supply Center Philadelphia).

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ The Government Waste Corrections Act: Hearings on H.R. 1827 Before the House Government Reform Subcommittee on Government Management, Information, and Technology, 106th Cong., 1st Sess. (1999) (Testimony of Gerald Peterson, Chief of Accounts Payable, Army and Air Force Exchange Service).

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

improper payments.³¹ The problems H.R. 1827 posed for Medicare, she testified, were that the bill's authorization to compensate recovery auditors on a contingency basis could be seen as a bounty system by health care providers, and that the recovered monies should go back to the Trust Fund rather than to the agency program.³²

Paul Dinkins, Executive Vice President of the Profit Recovery Group International, the firm that pioneered recovery auditing 28 years ago, testified to the success of this practice in the private sector. The potential benefits for the government he emphasized were: the risk free benefits of contingency fee arrangements; the recovery of funds for the agency and the Treasury; and executive management improvements.³³ Mr. Dinkins did express his concern with the disbursement of recovered money with regard to revolving funds, trust funds and the like, and indicated that he thought the recovered money, minus the contractor fees, should go back to the revolving or trust funds.³⁴

Doug Wilwerding, Chief Executive Officer and President of Omnium Worldwide Incorporated, testified primarily regarding the recovery auditing in the healthcare industry.³⁵ He stressed the focus on inadvertent, rather than fraudulent, nature of overpayments, and indicated that the vast majority of the overpayments in this area are due to duplicate payments, payments to ineligible beneficiaries, calculation errors, and payments to wrong providers, not judgments of medical necessity.³⁶ The overpayment rate for the private health insurance sector he estimates is about 4 percent of total claims paid.³⁷

With regard to the overpayment problem in the Medicare program, Mr. Wilwerding testified that the claims payment errors are being made by the fiscal intermediaries and carriers hired by HCFA to administer Medicare claims. These, he said, were the same carriers who hire private recovery firms to recover their overpaid dollars on their commercial insurance portfolio.³⁸

The testimony of Terrence Lyons, Director of Accounting at the Walgreen Company, provided a private sector view of recovery audit benefits and how his company uses the process.³⁹ Mr. Lyons indicated that the experience with overpayments at Walgreen's, a multi-billion dollar retailer, showed that human error is the most common contributing factor in payment errors that can never be

³¹The Government Waste Corrections Act: Hearings on H.R. 1827 Before the House Government Reform Subcommittee on Government Management, Information, and Technology, 106th Cong., 1st Sess. (1999) (Testimony of Michelle Snyder, Chief Financial Officer, Health Care Financing Administration).

³²Ibid.

³³The Government Waste Corrections Act: Hearings on H.R. 1827 Before the House Government Reform Subcommittee on Government Management, Information, and Technology, 106th Cong., 1st Sess. (1999) (Testimony of Paul Dinkins, Executive Vice President of the Profit Recovery Group International).

³⁴Ibid.

³⁵The Government Waste Corrections Act: Hearings on H.R. 1827 Before the House Government Reform Subcommittee on Government Management, Information, and Technology, 106th Cong., 1st Sess. (1999) (Testimony of Doug Wilwerding, Chief Executive Officer and President of Omnium Worldwide Incorporated).

³⁶Ibid.

³⁷Ibid.

³⁸Ibid.

³⁹The Government Waste Corrections Act: Hearings on H.R. 1827 Before the House Government Reform Subcommittee on Government Management, Information, and Technology, 106th Cong., 1st Sess. (1999) (Testimony of Terrence Lyons, Director of Accounting, the Walgreen Company).

entirely eliminated.⁴⁰ The advantage, he says, for using a recovery audit service is that there is no risk or investment required on behalf of his company.⁴¹ The dollars recovered for Walgreen's on 1996 purchases recovered \$16.9 million on an audit base of \$8.5 billion.⁴² For 1997 purchases, Walgreen's expects to recover \$17.5 million in overpayments on a purchase volume of \$9.7 billion.⁴³ The error rate over this time period is about .19 percent, meaning 99.8 percent of Walgreen's payable transactions were processed and paid correctly. Mr. Lyons explained the duties of the recovery audit contractor in this way:

Our recovery audit firm has responsibilities and duties to ensure the success of their effort. They gain a full understanding of our purchasing and payment systems for both electronic and paper transactions. They meet and develop good working relationships with all of the designated point of contact within our organization and they protect our vendor relationships. In short, we expect our contractor to function in a fully outsourced manner that represents the interest of the Walgreen company.⁴⁴

In his oral testimony, Mr. Lyons indicated the reasons why Walgreen's employs an outside firm to do recovery auditing:

The answer is simple. As a company, we have chosen to invest our developmental dollars in what we do best: systems and technology that provides improved productivity within our stores and improved customer service. Also the investment in technology and resources needed to develop this kind of capability in-house could be cost-prohibitive.⁴⁵

Summarizing the major benefits of recovery auditing, Mr. Lyons stressed the following:

We recover millions of dollars each year, we incur no financial burden, the process is not disruptive to our normal operations, and the nature of the service is ongoing with benefits, year after year.⁴⁶

Stephen Booma, a health care consultant with experience at the Travelers Insurance Company and Mutual of Omaha Insurance Company, testified regarding recovery auditing in the health care industry.⁴⁷ He emphasized that because it is their core business, that recovery audit experts be hired to perform recovery audits. This is because there is a strong inclination for the internal folks making the errors not to point those out.⁴⁸ He indicated that in the health care business, doctors, hospitals, healthcare providers, and

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ The Government Waste Corrections Act: Hearings on H.R. 1827 Before the House Government Reform Subcommittee on Government Management, Information, and Technology, 106th Cong., 1st Sess. (1999) (Testimony of Stephen Booma, health care consultant).

⁴⁸ Ibid.

insurance companies are very familiar with this process, and that it is not an adversarial process.⁴⁹

Robert Koehler, senior law partner at Patton Boggs, gave testimony representing the American Logistics Association (ALA), a trade association of some 600 vendors who sell brand-name items to the Federal Government.⁵⁰ His most serious concern was that the legislation could be construed to authorize agencies to delegate core responsibilities from the contracting officer to the audit company.⁵¹ His bottom line was that ALA could support H.R. 1827 if there was no delegation of authority from the contracting agency to the recovery audit firm.⁵² (This issue has since been clarified in the current version of H.R. 1827; the agency, not the contractor, makes all final determinations and collection actions.)

V. EXPLANATION OF THE BILL

General purpose of the bill

The background and need for the legislation are detailed earlier in this report. H.R. 1827 itself contains a brief outline of findings and purposes. Essentially, the legislation aims to address the significant problem of Federal Government overpayments using a proven private sector business practice, known as recovery auditing, in order to identify and recoup inadvertent overpayments made to private vendors. The other major aim of the legislation is to provide Federal agencies monetary incentives to make improvements to their underlying financial and program management structures so that overpayments are minimized.

What is recovery auditing?

While it is a fact that many Federal departments and agencies have serious financial management and systems weaknesses that make them vulnerable to erroneous payments, the use of recovery auditing is not a sign of poor financial management. No matter how fine-tuned an entity's financial management system, inadvertent overpayments are going to happen at one time or another. The greater the volume of purchasing, the greater the likelihood of overpayments. Recovery auditing is a common, private-sector financial management practice aimed directly at large volumes of payments to identify and recover overpayments. The majority of Fortune 500 companies use recovery auditing as an effective method for maximizing financial performance.

In the course of a typical recovery audit, all purchases and payment transaction media is reviewed—usually using customized, proprietary software—to identify where overpayments may have occurred. These potential overpayments are then further researched for verification to assemble all supporting documentation. Then identified overpayments are submitted to the client for review and approval. Subsequently, the vendor is notified via a 30-day let-

⁴⁹ Ibid.

⁵⁰ The Government Waste Corrections Act: Hearings on H.R. 1827 Before the House Government Reform Subcommittee on Government Management, Information, and Technology, 106th Cong., 1st Sess. (1999) (Testimony of Robert Koehler, Attorney-at-Law, Patton Boggs).

⁵¹ Ibid.

⁵² Ibid.

ter and asked to reply. Overpayments are usually recovered through direct payment or administrative offset.

Traditionally, recovery audits are performed by a specialty firm under a contingency fee contract arrangement, whereby the firm is paid an agreed-upon percentage of the overpayments recouped. Under this type of arrangement, there is no risk to the entity contracting for a recovery audit. All costs to plan for and conduct the audit are borne by the auditor. As overpayments are found and recovered, the client and the auditor share in the proceeds.

What agencies must do recovery auditing under the bill?

The mandate for recovery auditing under H.R. 1827 is triggered if the agency spends \$500 million or more annually for the purchase of goods and services that directly benefit the department or agency. H.R. 1827 only applies recovery auditing to an agency's spending for direct contracting—the purchase of goods and services for the direct benefit and use of the government. Examples include payments to a contractor to build a new Veteran's hospital, or DOD's purchase of a new weapons system.

H.R. 1827 would not require recovery auditing for programs that involve payments to third parties for the delivery of indirect services. Examples include education or drug treatment grants, or the Medicaid program. In these programs, Federal payments must make their way through any number of entities including states, localities, and other 3rd party entities, before service delivery to the general population. The issue is that the payment systems in these programs are often so complex, it is uncertain at this time where and how the recovery audit procedure would best be applied.

The decision not to apply recovery auditing to the more complex payment activities was not an easy one for the legislation's sponsor, Committee Chairman Dan Burton. After all, the Medicare program alone accounts for close to \$13 billion in erroneous payments each year. Again, it is unclear what portions of that \$13 billion constitute fraud versus inadvertent error. However, it is the intention of the Chairman, with the help of the General Accounting Office, to begin work immediately to find out how recovery auditing can best be applied to the inadvertent overpayments in this and similar Federal programs. To this end, GAO has recently begun a study regarding the nature of overpayment problems in the Medicare program, and the internal capacity of the agency to deal with these problems. With the final report due in May 2000, we may know more precisely where and how to apply recovery auditing to inadvertent overpayments in the Medicare program.

How will recovery auditing work under the bill?

The Committee envisions that recovery auditing will work in the Federal Government similarly to the way it works in the private sector. H.R. 1827 provides specifically that agency heads conduct recovery audits to ensure the best financial interest of the agency. Further, the legislation mandates a public-private cost comparison in order to determine whether to do recovery auditing in-house or by contract. In conducting their cost comparisons, the Committee expects that agencies will comply with current OMB circulars, and that they will also ensure that their cost comparisons are realistic

and fair; in other words, the cost comparisons should include the full cost of conducting the recovery audit, including the costs of quality assurance, liability insurance, employee retirement and disability benefits, and all other overhead costs.

Contingency fee contracts for recovery auditing

Historically, firms in the private sector have used contingency fee contract arrangements with recovery audit contractors. Under a contingency-fee arrangement, all resource investments are made by the contractor, and payment to the contractor is a predetermined percentage of the overpayments collected back. These recouped overpayments represent essentially “found” money that the entity would otherwise never have seen without the recovery audit. The Committee supports the use of contingency fee contracts by Federal agencies as a no-risk approach that will obviate the need for an agency to make expenditures from its annual appropriations in order to perform recovery auditing.

It has been stated in witness testimony that contingency fee arrangements could be seen as a “bounty-hunting” system. The Committee, however, does not see this as a valid argument against the use of such contracts. H.R. 1827 provides that contractors simply identify potential overpayments; they have no authority to make determinations or take collection action. Those functions remain with the agency. Recovery audit contractors would not get paid under a contingency fee arrangement on the basis of what they identify, but only on the basis of what the agency collects from what they identify.

What are the functions and limitations on recovery audit contractors?

The major function of the recovery audit firm under H.R. 1827 is to undertake a series of actions to identify potential agency overpayments. It is then up to the agency to determine, in accordance with its established procedures, whether the findings of the auditor in fact constitute overpayments and, if so, to begin the collection process. The Committee does not intend for this bill to conflict with any provision of the Federal Acquisition Regulations (FAR). Formal contact with the vendor should take place in the name of the agency (or contracting officer). H.R. 1827 does allow for informal contact between the recovery audit firm and the vendor in order to discuss possible overpayments and to answer questions concerning overpayments. However, the essential role of the audit firm would be to provide the agency the necessary background documentation and research to substantiate the agency’s overpayment determinations and collection efforts.

Issues that arise during the collection process would be guided by current law, including the relevant provisions of the Debt Collection Act. Similarly, any disputes or litigation that might arise between the agency and the vendor charged with the overpayment would be dealt with under the Contract Disputes Act and other applicable laws.

The recovery audit contractor would not be authorized to require the production of records or information from entities other than the contracting agency. While the contractor may communicate

with the vendor during the audit to seek records and process clarifications, the contractor is not authorized to mandate the provision of vendor records. Also, the recovery audit contractor is obligated to protect from disclosure any private or confidential business, personal, and financial information it may acquire in the course of the audit. After the audit is completed, individually identifiable information must be returned or destroyed.

After the audit, the recovery audit contractor is required to provide a report to the agency head regarding the problems giving rise to the overpayments. The report would also contain recommendations for mitigating those problems. If the auditor comes across any information that might indicate criminal or fraudulent activity, the auditor must immediately notify the agency head and the agency inspector general.

H.R. 1827 specifically indicates that current authorities under the Inspectors General Act are not to be affected by anything in H.R. 1827.

What happens to money collected back?

In general, at least 50 percent of the overpayment amounts collected back after a recovery audit must be returned to the general Treasury. Not more than 25 percent would be available for the agency to carry out a management improvement program, and any other amounts would be available to reimburse the recovery audit contractor, or to reimburse the agency's appropriation for other costs incurred with respect to the recovery audit. The exceptions are (1) if the funds collected originated from a non-appropriated fund instrumentality, trust fund, working capital fund, revolving fund, or other such fund or account, the disposition requirements of H.R. 1827 would not apply, and; (2) if the funds collected originated from a current appropriation or fund that remains available for obligation, they could be used to pay recovery audit costs, but otherwise must be returned to that appropriation or fund.

What is the management improvement program?

Looking back at past payments is a major thrust of H.R. 1827. However, the legislation also recognizes that there is an equally important goal of getting the payment right in the first place. In addressing the front end of the problem, the legislation requires that agencies use part of the money they get back to work on improvements to their management and financial systems to, as a priority, improve overpayment error rates, and then to address other weaknesses. Improvements may be made to an agency's staff capacity, information technology, and financial management. The agency must be able to account for its expenditures and activities with regard to the management improvement program.

What are OMB's responsibilities under the bill?

The Office of Management and Budget (OMB) would be required to coordinate the implementation of the bill among the Federal agencies and departments. No later than 180 days after H.R. 1827 becomes law, OMB must issue guidance to the agencies, after consultation with the Chief Financial Officers Council and the President's Council on Integrity and Efficiency. That guidance must in-

clude standards for recovery auditing that would be developed in consultation with the General Accounting Office and with private sector recovery audit experts. The Committee expects that OMB's guidance would direct agencies to consider opportunities with recovery audit firms that become approved for listing on the government-wide competitive schedule assembled by the General Services Administration.

The Committee expects that the natural forces of competition will work sufficiently to guarantee fair and reasonable contract provisions between the agency and recovery audit contractor, particularly as it pertains to contingency fee percentages. While the Committee does not anticipate the need for it, H.R. 1827 does give the Director authority to place limitations on the percentage amounts that may be paid to contractors. The Committee expects such authority to be used on a case-by-case basis and in extreme circumstances, such as a break-down in the competitive process.

The OMB Director is also authorized to exempt agencies from the provisions of the bill if recovery auditing proves not to be cost-effective or if it somehow impedes the agency's mission. The Committee does not foresee the need for exemptions to be made, and expects that if an exemption were made because of cost-effectiveness, such determination would be based on the agency's experience with recovery auditing for a reasonable period of time.

No later than one year after H.R. 1827 becomes law, and for two years thereafter, OMB must submit a report to the President and Congress. The reports would include: (1) an inventory of programs and activities subject to recovery audits; (2) an assessment of recovery auditing with amounts identified and recovered; (3) an identification of best practices and significant problems; (4) a description of agency expenditures in the recovery audit process; (5) a description of the management improvement programs, and; (6) any recommendations for agency practices or changes in law that would improve the application of recovery auditing for the Federal Government.

GAO reports

No later than sixty (60) days after each OMB report, the General Accounting Office (GAO) must submit a report on the implementation of the Act to the certain committees in the House and Senate, and to OMB.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title

Section 1 would provide that the Act might be cited as the "Government Waste Corrections Act of 1999."

Sec. 2. Findings and purposes

Section 2 would provide a statement of findings and purposes for the legislation. The findings are that: (1) overpayments are a serious problem for Federal agencies that waste tax dollars and detract from the efficiency and effectiveness of Federal operations; (2) that an established business practice known as "recovery auditing" has been used successfully in the private sector for many years to iden-

tify and recoup overpayments to providers of goods and services; and (3) that recovery auditing and activity have great potential for application to the Federal Government.

The purposes of the legislation would be to: (1) ensure that overpayments made by the Federal Government—that would otherwise remain undetected—are identified and recovered; (2) require the use of recovery audits by Federal agencies in order to collect overpayments; and (3) provide incentives for agencies to make improvements in Federal management practices, thereby significantly reducing overpayments, waste, and error in Federal programs.

Sec. 3. Establishment of recovery audit requirement

Section 3(a) would add a new subchapter to chapter 35 of title 31, United States Code, entitled “Recovery Audits” containing sections 3561 through 3566.

Section 3561. Definitions

This section would contain definitions of terms applicable under this legislation. The term “Director” would mean the Director of the Office of Management and Budget (OMB). The term “payment activity” would mean an agency activity that entails making payments to vendors or other non-governmental entities that provide goods or services for the direct use of an agency. The term “recovery audit” would mean a financial management technique used to identify overpayments in agency payment activities. The term “recovery activity” would mean the process, otherwise authorized by law, to try and collect overpayments.

Section 3562. Recovery audit requirement

Subsection (a) would require each executive agency to conduct recovery audits for every fiscal year if combined payment activities total at least \$500 million annually on goods or services for the use or direct benefit of the agency. Agencies may conduct recovery audits for payment activities under this threshold if they so choose.

Subsection (b) would provide that agency heads consult and coordinate recovery audits with the agency Chief Information Officer and the Inspector General. Agencies would be directed to ensure the maximum financial benefit to the government. Agencies would be authorized to conduct recovery audits in-house, contract with private recovery audit specialists, or use any combination thereof. It would be necessary for recovery audits to comply with a recovery audit standard to be set forth by the Director of OMB.

Subsection (c) would require recovery audits to be performed for each fiscal year, with the agency’s first recovery audit to cover the 2 fiscal years prior to the date the legislation is enacted, and every year thereafter. The agency head would be authorized to conduct recovery audits for additional preceding years if deemed practical and cost-effective.

Subsection (d) would prescribe authorities and functions of recovery audit contractors and terms and conditions required in recovery audit contracts. Under (d)(1), the agency head would have the explicit authority to use contingency contracts, whereby contractors would be allowed to retain a percentage of collections from overpayments they identify during the audit.

Under (d)(2), a contract for the performance of recovery auditing would be allowed to contain authorization for the contractor to notify a person on behalf of the agency of possible overpayments and to respond to questions concerning such overpayments. Contracts for recovery auditing would not affect an agency's authorities under the Contract Disputes Act, the Debt Collection Act, or other applicable laws to resolve disputes and take collection action. Under (d)(3), contractors would not be authorized to require the production of records or information from entities other than the contracting agency.

Under (d)(4), contractors would be required to protect any confidential business and financial information they come across in the course of their recovery audit work. They would be required to report to the agency on the causes of overpayments they identify and offer any recommendations they have on how to mitigate them. They would also be required to notify the agency of any overpayments they happen to identify that are beyond the scope of their contracts. They would have to promptly notify the agency head and the inspector general of suspected fraudulent or criminal activity.

Agencies, under (d)(5), would be required to take prompt and appropriate action in response to contractor recommendations and notifications.

Under (d)(6), agencies would have to conduct a public-private cost comparison to determine whether to conduct recovery auditing in-house, or by contract.

Subsection (e) would indicate that the legislation would not affect current authorities of Inspectors General, including such authorities under the Inspector General Act of 1978.

Subsection (f) would limit the disclosure by recovery audit contractors of any individually identifiable information obtained during the course of the audit, and places liability for damages on any violators of this limitation. The subsection would also require the destruction or return of individually identifiable information at the conclusion of the audit.

Section 3563. Disposition of amounts collected

Subsection (a) would provide that this section applies to annual amounts recouped by the United States.

Subsection (b) would provide authority for amounts recovered to be available to pay for a recovery audit contractor and to reimburse applicable appropriations for recovery audit costs incurred by the agency.

Subsection (c) would provide authority for up to 25 percent of collections to be used to fund agency management improvement programs under section 3564.

Subsection (d) would require that at least 50 percent and any additional amounts not used for recovery audit costs or the management improvement program would revert to the Treasury.

Subsection (e)(1) would exempt from this section, amounts collected if the application would be inconsistent with other provisions of law governing the crediting of collections. Examples include non-appropriated fund instrumentalities, revolving funds, working capital funds, and trust funds. Subsection (e)(2) would provide that, except for use for recovery audit costs, the disposition authorities

and requirements for collected amounts under this section would not apply to funds that remain available for obligation at the time the amounts are collected.

Section 3564. Management improvement program

Subsection (a) would require the agencies that are mandated to conduct recovery audits to implement management improvement programs consistent with guidance prescribed by the Director of OMB. Other agencies that conduct recovery auditing in compliance with OMB guidance would be authorized to implement management improvement programs.

Subsection (b) would require the agency to make dealing with the problems that contributed to the overpayments collected through recovery audits the first priority of the management improvement program. The agency head would also be able to use the management improvement program for other initiatives to reduce error and waste in agency programs.

Subsection (c) would authorize the agency head to integrate the management improvement program with other management improvement programs within the agency or with other agencies. Agency heads would have flexibility, within the guidance established by OMB, over how to conduct their management improvement programs; however, they must be able to account for the use of amounts made available from recovery audit proceeds.

Section 3565. Responsibilities of the Office of Management and Budget

Subsection (a) would assign the Director of OMB general responsibility for coordinating and overseeing the implementation of the legislation.

Subsection (b) would require the Director of OMB in consultation with the Chief Financial Officers Council (CFOC) and the President's Council on Integrity and Efficiency (PCIE), to issue initial guidance within 180 days after the legislation becomes law. The guidance would include recovery audit standards to be developed in consultation with the CFOC, PCIE, General Accounting Office (GAO), and private recovery audit specialists.

Subsection (c) would authorize the Director of OMB to place limitations on percentage amounts paid to contractors under contingency fee arrangements.

Subsection (d) would authorize the Director of OMB to make exemptions from the recovery audit mandate if compliance with such a mandate would impede the agency's mission or would not be cost effective. The Director would have to promptly report any such determination and exemption to the House Committee on Government Reform and the Senate Committee on Governmental Affairs.

Subsection (e) would require the Director of OMB to submit to the President and Congress detailed reports on implementation of the Act for each of the first three years following its enactment. The reports would include: a description and evaluation of agency efforts to conduct recovery audits; an assessment of the benefits of the Act, including amounts identified and recovered; an identification of best practices; a list of significant problems to more successful recovery audits and activity; a report on agency expenditures

related to recovery auditing; a description of the management improvement programs; and recommendations for changes in agency practices or law that would improve agency efforts under this Act.

Section 3566. General Accounting Office reports

This section would require the GAO to make annual reports to Congress on implementation of the Act for the first three years following its enactment. Each GAO report is due not more than 60 days after each of the OMB reports under section 3566.

Sec. 3(b) of the legislation would clarify that its provisions apply to all Executive Branch agencies.

Sec. 3(c) of the legislation would require agencies to begin recovery audits not later than 18 months after the date of enactment of the Act.

Sec. 3(d) of the legislation is a clerical amendment that would add the contents of this bill to the contents of existing United States Code.

VI. COMPLIANCE WITH RULE XIII

Pursuant to rule XIII, clause 3(c)(1) of the Rules of the House of Representatives, under the authority of rule X, clause 2(b)(1), the results and findings from Committee oversight activities are incorporated in the Bill and this report.

VII. BUDGET ANALYSIS AND PROJECTIONS

H.R. 1827 provides for no new authorization, budget authority, or tax expenditures. Consequently, the provisions of section 308(a)(1) of the Congressional Budget Act of 1994 are not applicable.

VIII. COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 17, 1999.

Hon. DAN BURTON,
*Chairman, Committee on Government Reform,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1827, the Government Waste Corrections Act of 1999.

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

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure.

H.R. 1827—Government Waste Corrections Act of 1999

Summary

H.R. 1827 would require federal agencies to conduct specialized audits of accounts that purchase at least \$500 million of goods and services from the private sector. By increasing the federal govern-

ment's recovery of erroneous payments made to the private sector, CBO estimates that enacting H.R. 1827 would decrease direct spending by \$100 million over the 2000–2004 period and by \$90 million over the 2000–2009 period. Consequently, pay-as-you-go procedures would apply to the bill. Implementing the bill could yield similar savings in net spending for amounts made available in years after fiscal year 2000, but such savings would depend on the amounts appropriated for the relevant accounts. In addition, CBO estimates that the Office of Management and Budget (OMB) would spend less than \$500,000 a year to oversee and report on the bill's implementation and that the General Accounting Office (GAO) would spend less than \$500,000 in each of fiscal years 2001 through 2003 to report on the bill's effectiveness.

H.R. 1827 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on the budgets of state, local, or tribal governments.

Description of the bill's major provisions

H.R. 1827 would require federal agencies to conduct specialized audits of accounts that purchase at least \$500 million of goods and services from the private sector. The audits, referred to as recovery auditing, are conducted using software that identifies such anomalies as pricing errors on invoices, duplicate payments, miscalculated freight charges, and any failure to provide applicable rebates, allowances, and discounts.

For certain accounts, H.R. 1827 would allow agencies to retain and spend, without further appropriation action, one-half of any amounts collected from conducting recovery audits. Agencies could use the amounts they retain to improve management functions and to pay for the costs of performing the audits. The bill would require agencies to deposit the remaining amounts recovered in the Treasury as miscellaneous receipts.

As part of its role in overseeing the bill's implementation, OMB could exempt agencies or programs from the requirements of H.R. 1827. The bill would require both OMB and GAO to report to the Congress on the bill's implementation in each of fiscal years 2001 through 2003.

Estimated costs to the Federal Government

CBO estimates that implementing H.R. 1827 would increase off-setting receipts from the recovery of overpayments by about \$180 million over fiscal years 2001 through 2005. That estimate represents recovery of overpayments made with funds appropriated during fiscal years 1998, 1999, and 2000. Because the bill would allow agencies to retain and spend one-half of such amounts without further appropriation, CBO estimates that the bill would also increase direct spending by a total of about \$90 million over fiscal years 2002 through 2006. Implementing the bill could yield similar savings in net spending for amounts made available in years after fiscal year 2000, but such savings would depend on the amounts appropriated.

The estimated budgetary impact of H.R. 1827 is shown in the following table. The costs of this legislation fall within multiple budget functions.

	By fiscal year in millions of dollars—				
	2000	2001	2002	2003	2004
CHANGES IN DIRECT SPENDING ¹					
Recovery of overpayments:					
Estimated budget authority	0	(²)	–20	–100	–50
Estimated outlays	0	(²)	–20	–100	–50
Spending by agencies:					
Estimated budget authority	0	(²)	10	50	25
Estimated outlays	0	(²)	5	25	40
Total changes:					
Estimated budget authority	0	(²)	–10	–50	–25
Estimated outlays	0	(²)	–15	–75	–10

¹ Implementing the bill would also affect spending subject to appropriation.

² Less than \$500,000.

Basis of estimate

This estimate assumes that the bill will be enacted early in fiscal year 2000.

Direct spending

Audits of Appropriated Accounts.—Within 18 months of enactment, H.R. 1827 would require agencies to begin conducting recovery audits of payments made from certain accounts during fiscal years 1998 and 1999. CBO expects that audits of payments made during fiscal year 2000 would begin early in 2002. Based on an analysis of data from the Federal Procurement Report, Fiscal Year 1998, which is compiled by the General Services Administration, CBO estimates that recovery audits could apply to about \$125 billion in annual payments that were made in each of fiscal years 1998 and 1999, net of those payments (including payments from revolving and working capital funds) that we expect will be audited under current law. However, CBO expects that OMB would exempt certain accounts from the bill's requirements, including accounts that involve the research, resting, and procurement of military weapons, finance federal law enforcement activities, and involve medical records. Thus, we estimate that the bill's requirement to audit payments would apply to about \$60 billion in annual payments.

In the private sector, companies using the recovery audit process have identified and collected approximately \$1 for every \$1,000 in audited payments, or a rate of 0.1 percent. Recovery audits of some payments made by the Department of Defense (DoD) have identified a payment error rate of 0.4 percent; however, DoD's experience in recovering the identified overpayments is mixed. On average, CBO assumes the federal government would recover about 0.1 percent of the \$60 billion audited, or \$60 million a year. That rate takes into account the increased difficulty in collecting overpayments that are more than one year old and the likelihood that federal agencies will settle for less than full payment on some of these debts. We expect that agencies would not begin collecting overpayments from contractors until the end of fiscal year 2001.

Audits of Revolving and Working Capital Funds.—H.R. 1827 also could affect spending from accounts that receive no annual appropriations, such as revolving and working capital funds. Some agencies, particularly the DoD, are currently auditing tens of billions of dollars of payments from such accounts already, and CBO expects that they will continue to expand their use of recovery auditing to recapture overpayments made from these accounts. Under the bill, none of the funds recovered by revolving and working capital funds would be deposited in the Treasury. Therefore, the legislation would have no net budgetary effect for such accounts.

Discretionary spending

If recovery audits are used to collect overpayments made with funds appropriated after 2000, then implementing the bill could yield savings similar to the net recoveries estimated for audits of 1998, 1999, and 2000, but such savings would depend on the amounts appropriated for the relevant accounts. If appropriations were to continue at about the same level as in fiscal year 2000, the net savings would average about \$30 million a year in 2003 and subsequent years.

In addition, CBO estimates that OMB would spend less than \$500,000 a year to oversee and report on the bill’s implementation and that GAO would spend less than \$500,000 in each of fiscal year 2001 through 2003 to report on the bill’s effectiveness.

Pay-as-you-go considerations

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting directing spending or receipts. The net changes in outlays that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the budget year and the succeeding four years are counted.

	By fiscal year, in millions of dollars—									
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Changes in outlays	0	0	-15	-75	-10	7	3	0	0	0
Changes in receipts	Not applicable									

Intergovernmental and private-sector impact

H.R. 1827 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on the budgets of state, local, or tribal governments.

Estimate prepared by: John R. Righter.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

IX. SPECIFIC CONSTITUTIONAL AUTHORITY FOR THIS LEGISLATION

Clauses 1, 14, and 18 of Article 1, section 8 of the Constitution grant Congress the power to enact this law.

X. COMMITTEE RECOMMENDATION

On November 10, 1999, a quorum being present, the Committee on Government Reform ordered H.R. 1827, as amended, favorably reported.

XI. CONGRESSIONAL ACCOUNTABILITY ACT; PUBLIC LAW 104-1

H.R. 1827, as amended by the Committee, amends chapter 35 of title 31, United States Code, to require Federal agencies to perform recovery audits if their direct purchases for goods and services totaling \$500 million or more per fiscal year. The legislation does not apply to the House of Representatives or to the Senate, thus H.R. 1827 does not apply to the Congress.

XII. FEDERAL ADVISORY COMMITTEE ACT (5 U.S.C. APP.) SECTION 5(b)

The Committee finds that the legislation does not establish or authorize the establishment of an advisory Committee within the definition of 5 U.S.C. App., Section 5(b).

XIII. UNFUNDED MANDATES REFORM ACT; PUBLIC LAW 104-4, SECTION 425

The Committee finds that the legislation does not impose any Federal Mandates within the meaning of Section 423 of the Unfunded Mandates Reform Act (P.L. 104-4).

XIV. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CHAPTER 35 OF TITLE 31, UNITED STATES CODE

CHAPTER 35—ACCOUNTING AND COLLECTION

SUBCHAPTER I—GENERAL

Sec.							
3501.	Definition.	*	*	*	*	*	*

SUBCHAPTER VI—RECOVERY AUDITS

3561.	<i>Definitions.</i>						
3562.	<i>Recovery audit requirement.</i>						
3563.	<i>Disposition of amounts collected.</i>						
3564.	<i>Management improvement program.</i>						
3565.	<i>Responsibilities of the Office of Management and Budget.</i>						
3566.	<i>General Accounting Office reports.</i>	*	*	*	*	*	*

SUBCHAPTER VI—RECOVERY AUDITS

§ 3561. Definitions

In this subchapter, the following definitions apply:

(1) *DIRECTOR.*—The term “Director” means the Director of the Office of Management and Budget.

(2) *DISCLOSE.*—The term “disclose” means to release, publish, transfer, provide access to, or otherwise divulge individually identifiable information to any person other than the individual who is the subject of the information.

(3) *INDIVIDUALLY IDENTIFIABLE INFORMATION.*—The term “individually identifiable information” means any information, whether oral or recorded in any form or medium, that identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

(4) *OVERSIGHT.*—The term “oversight” means activities by a Federal, State, or local governmental entity, or by another entity acting on behalf of such a governmental entity, to enforce laws relating to, investigate, or regulate payment activities, recovery activities, and recovery audit activities.

(5) *PAYMENT ACTIVITY.*—The term “payment activity” means an executive agency activity that entails making payments to vendors or other nongovernmental entities that provide property or services for the direct benefit and use of an executive agency.

(6) *RECOVERY AUDIT.*—The term “recovery audit” means a financial management technique used to identify overpayments made by executive agencies with respect to vendors and other entities in connection with a payment activity, including overpayments that result from any of the following:

(A) Duplicate payments.

(B) Pricing errors.

(C) Failure to provide applicable discounts, rebates, or other allowances.

(D) Inadvertent errors.

(7) *RECOVERY ACTIVITY.*—The term “recovery activity” means activity otherwise authorized by law, including chapter 37 of this title, to attempt to collect an identified overpayment—

(A) within 180 days after the date the overpayment is identified; and

(B) through established professional practices.

§ 3562. Recovery audit requirement

(a) *IN GENERAL.*—Except as exempted by the Director under section 3565(d) of this title, the head of each executive agency—

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

(2) may conduct for any fiscal year recovery audits and recovery activity with respect to payment activities of the agency if such payment activities for the fiscal year total less than \$500,000,000 (adjusted by the Director annually for inflation).

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

(1) shall consult and coordinate with the Chief Financial Officer and the Inspector General of the agency;

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

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

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

(c) **SCOPE OF AUDITS.**—(1) Each recovery audit of a payment activity under this section shall cover payments made by the payment activity in a fiscal year, except that the first recovery audit of a payment activity shall cover payments made during the 2 consecutive fiscal years preceding the date of the enactment of the Government Waste Corrections Act of 1999.

(2) The head of an executive agency may conduct recovery audits of payment activities for additional preceding fiscal years if determined by the agency head to be practical and cost-effective.

(d) **RECOVERY AUDIT CONTRACTS.**—

(1) **AUTHORITY TO USE CONTINGENCY CONTRACTS.**—Notwithstanding section 3302(b) of this title, as consideration for performance of any recovery audit procured by an executive agency, the executive agency may pay the contractor an amount equal to a percentage of the total amount collected by the United States as a result of overpayments identified by the contractor in the audit.

(2) **ADDITIONAL FUNCTIONS OF CONTRACTOR.**—(A) In addition to performance of a recovery audit, a contract for such performance may authorize the contractor (subject to subparagraph (B)) to—

(i) notify any person of possible overpayments made to the person and identified in the recovery audit under the contract; and

(ii) respond to questions concerning such overpayments.

(B) A contract for performance of a recovery audit shall not affect—

(i) the authority of the head of an executive agency under the Contract Disputes Act of 1978 and other applicable laws, including the authority to initiate litigation or referrals for litigation; or

(ii) the requirements of sections 3711, 3716, 3718, and 3720 of this title that the head of an agency resolve disputes, compromise or terminate overpayment claims, collect by setoff, and otherwise engage in recovery activity with respect to overpayments identified by the recovery audit.

(3) **LIMITATION ON AUTHORITY.**—Nothing in this subchapter shall be construed to authorize a contractor with an executive agency to require the production of any record or information by any person other than an officer, employee, or agent of the executive agency.

(4) **REQUIRED CONTRACT TERMS AND CONDITIONS.**—The head of an executive agency shall include in each contract for procurement of performance of a recovery audit requirements that the contractor shall—

(A) protect from disclosure otherwise confidential business information and financial information;

(B) provide to the head of the executive agency and the Inspector General of the executive agency periodic reports on conditions giving rise to overpayments identified by the contractor and any recommendations on how to mitigate such conditions;

(C) notify the head of the executive agency and the Inspector General of the executive agency of any overpayments identified by the contractor pertaining to the executive agency or to another executive agency that are beyond the scope of the contract; and

(D) promptly notify the head of the executive agency and the Inspector General of the executive agency of any indication of fraud or other criminal activity discovered in the course of the audit.

(5) *EXECUTIVE AGENCY ACTION FOLLOWING NOTIFICATION.*—The head of an executive agency shall take prompt and appropriate action in response to a notification by a contractor pursuant to the requirements under paragraph (4), including forwarding to other executive agencies any information that applies to them.

(6) *CONTRACTING REQUIREMENTS.*—Prior to contracting for any recovery audit, the head of an executive agency shall conduct a public-private cost comparison process. The outcome of the cost comparison process shall determine whether the recovery audit is performed in-house or by a contractor.

(e) *INSPECTORS GENERAL.*—Nothing in this subchapter shall be construed as diminishing the authority of any Inspector General, including such authority under the Inspector General Act of 1978.

(f) *PRIVACY PROTECTIONS.*—

(1) *LIMITATION ON DISCLOSURE OF INDIVIDUALLY IDENTIFIABLE INFORMATION.*—(A) Any nongovernmental entity that obtains individually identifiable information through performance of recovery auditing or recovery activity under this chapter may disclose that information only for the purpose of such auditing or activity, respectively, and oversight of such auditing or activity, unless otherwise authorized by the individual that is the subject of the information.

(B) Any person that violates subparagraph (A) shall be liable for any damages (including nonpecuniary damages, costs, and attorneys fees) caused by the violation.

(2) *DESTRUCTION OR RETURN OF INFORMATION.*—Upon the conclusion of the matter or need for which individually identifiable information was disclosed in the course of recovery auditing or recovery activity under this chapter performed by a nongovernmental entity, the nongovernmental entity shall either destroy the individually identifiable information or return it to the person from whom it was obtained, unless another applicable law requires retention of the information.

§ 3563. Disposition of amounts collected

(a) *IN GENERAL.*—Notwithstanding section 3302(b) of this title, the amounts collected annually by the United States as a result of

recovery audits by an executive agency under this subchapter shall be treated in accordance with this section.

(b) *USE FOR RECOVERY AUDIT COSTS.*—Amounts referred to in subsection (a) shall be available to the executive agency—

(1) to pay amounts owed to any contractor for performance of the audit; and

(2) to reimburse any applicable appropriation for other recovery audit costs incurred by the executive agency with respect to the audit.

(c) *USE FOR MANAGEMENT IMPROVEMENT PROGRAM.*—Of the amount referred to in subsection (a), a sum not to exceed 25 percent of such amount—

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

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

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

(d) *REMAINDER TO TREASURY.*—Of the amount referred to in subsection (a), there shall be deposited into the Treasury as miscellaneous receipts a sum equal to—

(1) 50 percent of such amount; plus

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

(e) *LIMITATION ON APPLICATION.*—

(1) *IN GENERAL.*—This section shall not apply to amounts collected through recovery audits and recovery activity to the extent that such application would be inconsistent with another provision of law that authorizes crediting of the amounts to a nonappropriated fund instrumentality, revolving fund, working capital fund, trust fund, or other fund or account.

(2) *SUBSECTIONS (c) AND (d).*—Subsections (c) and (d) shall not apply to amounts collected through recovery audits and recovery activity, to the extent that such amounts are derived from an appropriation or fund that remains available for obligation at the time the amounts are collected.

§ 3564. Management improvement program

(a) *CONDUCT OF PROGRAM.*—

(1) *REQUIRED PROGRAMS.*—The head of each executive agency that is required to conduct recovery audits under section 3562 of this title shall conduct a management improvement program under this section, consistent with guidelines prescribed by the Director.

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

(b) *PROGRAM FEATURES.*—In conducting the program, the head of the executive agency—

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

(2) may seek to reduce errors and waste in other executive agency programs and operations by improving the executive agency's staff capacity, information technology, and financial management.

(c) *INTEGRATION WITH OTHER ACTIVITIES.*—The head of an executive agency—

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

(2) must retain the ability to account specifically for the use of amounts made available under section 3563 of this title.

§ 3565. Responsibilities of the Office of Management and Budget

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

(b) *GUIDANCE.*—

(1) *IN GENERAL.*—The Director, in consultation with the Chief Financial Officers Council and the President's Council on Integrity and Efficiency, shall issue guidance and provide support to agencies in implementing the subchapter. The Director shall issue initial guidance not later than 180 days after the date of enactment of the Government Waste Corrections Act of 1999.

(2) *RECOVERY AUDIT STANDARDS.*—The Director shall include in the initial guidance under this subsection standards for the performance of recovery audits under this subchapter, that are developed in consultation with the Comptroller General of the United States and private sector experts on recovery audits.

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

(d) *EXEMPTIONS.*—

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

(A) would impede the agency's mission; or

(B) would not be cost-effective.

(2) *REPORT TO CONGRESS.*—The Director shall promptly report the basis of any determination and exemption under paragraph (1) to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate.

(e) *REPORTS.*—

(1) *IN GENERAL.*—Not later than 1 year after the date of the enactment of the Government Waste Corrections Act of 1999, and annually for each of the 2 years thereafter, the Director shall submit a report on implementation of the subchapter to the President, the Committee on Government Reform of the House of Representatives, the Committee on Governmental Af-

fairs of the Senate, and the Committee on Appropriations of the House of Representatives and of the Senate.

(2) *CONTENTS.—Each report shall include—*

(A) a general description and evaluation of the steps taken by executive agencies to conduct recovery audits, including an inventory of the programs and activities of each executive agency that are subject to recovery audits;

(B) an assessment of the benefits of recovery auditing and recovery activity, including amounts identified and recovered (including by administrative setoffs);

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

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

(E) a description of executive agency expenditures in the recovery audit process;

(F) a description of executive agency management improvement programs under section 3564 of this title; and

(G) any recommendations for changes in executive agency practices or law or other improvements that the Director believes would enhance the effectiveness of executive agency recovery auditing.

§ 3566. General Accounting Office reports

Not later than 60 days after issuance of each report under section 3565(e) of this title, the Comptroller General of the United States shall submit a report on the implementation of this subchapter to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on Appropriations of the House of Representatives and of the Senate, and the Director.