

106TH CONGRESS
1ST SESSION

H. R. 1827

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

IN THE HOUSE OF REPRESENTATIVES

MAY 17, 1999

Mr. BURTON of Indiana (for himself, Mr. ARMEY, and Mr. OSE) introduced the following bill; which was referred to the Committee on Government Reform

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Government Waste
5 Corrections Act of 1999”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

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

8 (1) In private industry, overpayments to pro-
9 viders of goods and services occur for a variety of
10 reasons, including duplicate payments, pricing er-

1 rors, and missed cash discounts, rebates, or other al-
2 lowances. The identification and recovery of such
3 overpayments, commonly referred to as “recovery
4 auditing”, is an established private sector business
5 practice with demonstrated large financial returns.
6 On average, recovery audits in the private sector
7 identify payment error rates of 0.1 percent of pur-
8 chases audited and result in the recovery of
9 \$1,000,000 for each \$1,000,000,000 of purchases.

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

18 (3) Recovery auditing already has been em-
19 ployed successfully in limited areas of Federal activ-
20 ity. It has great potential for expansion to many
21 other Federal agencies and activities, thereby result-
22 ing in the recovery of substantial amounts of over-
23 payments annually. Limited recovery audits con-
24 ducted to date have identified errors averaging 0.4
25 percent of Federal payments audited, or \$4,000,000

1 for every \$1,000,000,000 of payments. If fully im-
2 plemented within the Federal Government, recovery
3 auditing has the potential to recover billions of dol-
4 lars in Federal overpayments annually.

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

7 (1) To require the use of recovery audits by
8 Federal agencies.

9 (2) To provide incentives and resources to im-
10 prove Federal management practices with the goal
11 of significantly reducing Federal overpayment rates
12 and other waste and error in Federal programs.

13 **SEC. 3. ESTABLISHMENT OF RECOVERY AUDITS REQUIRE-**
14 **MENT.**

15 (a) ESTABLISHMENT OF REQUIREMENT.—Chapter
16 35 of title 31, United States Code, is amended by adding
17 at the end the following:

18 “SUBCHAPTER VI—RECOVERY AUDITS

19 “§ 3561. **Definitions**

20 “In this subchapter, the following definitions apply:

21 “(1) DIRECTOR.—The term ‘Director’ means
22 the Director of the Office of Management and Budg-
23 et.

1 “(2) PAYMENT ACTIVITY.—The term ‘payment
2 activity’ means an executive agency activity that en-
3 tails making payments to—

4 “(A) vendors or other entities that provide
5 property or services for the direct benefit or use
6 of an executive agency; or

7 “(B) entities that provide services or make
8 payments on behalf of the Federal Government
9 pursuant to contractual arrangements with an
10 executive agency.

11 “(3) RECOVERY AUDIT.—The term ‘recovery
12 audit’ means an auditing process to identify over-
13 payments made by executive agencies to vendors and
14 other commercial entities in connection with a pay-
15 ment activity, including overpayments that result
16 from duplicate payments, pricing errors, failure to
17 provide applicable discounts, rebates, or other appli-
18 cable allowances, or charges or payments that are
19 not authorized by law, regulation, or other applicable
20 requirements.

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

22 “(a) IN GENERAL.—Except as provided in subsection
23 (d), the head of each executive agency—

1 “(1) shall conduct recovery audits with respect
2 to each payment activity of the executive agency that
3 expends \$10,000,000 or more annually; and

4 “(2) may conduct recovery audits for any other
5 payment activity of the executive agency.

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

8 “(1) shall give priority to the most recent pay-
9 ments;

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

13 “(3) may conduct recovery audits directly, by
14 procuring performance of recovery audits by con-
15 tract (subject to the availability of appropriations),
16 or by any combination thereof.

17 “(c) RECOVERY AUDIT CONTRACTS.—

18 “(1) EXECUTIVE AGENCY AUTHORITIES.—With
19 respect to recovery audits procured by an executive
20 agency by contract—

21 “(A) notwithstanding section 3302(b) of
22 this title, the executive agency head may pay
23 the contractor an amount not to exceed 25 per-
24 cent of the total amount recovered by the exec-
25 utive agency, through setoff and otherwise, sole-

1 ly on the basis of information obtained as a re-
2 sult of audits performed by the contractor
3 under the contract;

4 “(B) the executive agency head may au-
5 thorize the contractor (subject to subparagraph
6 (C)) to notify entities of potential overpay-
7 ments, to respond to questions concerning po-
8 tential overpayments, and to take other admin-
9 istrative actions with respect to overpayment
10 claims; and

11 “(C) subject to section 3711 of this title,
12 the executive agency head shall have final au-
13 thority to resolve disputes, to compromise or
14 terminate overpayment claims, to collect by
15 setoff, and to initiate litigation or referrals for
16 litigation.

17 “(2) CONTRACT TERMS AND CONDITIONS.—The
18 head of an executive agency shall include in each
19 contract for procurement of performance of a recov-
20 ery audit a requirement that the contractor shall—

21 “(A) provide to the executive agency peri-
22 odic reports on conditions giving rise to over-
23 payments identified by the contractor and any
24 recommendations on how to mitigate such con-
25 ditions; and

1 “(B) notify the executive agency of any
2 overpayments identified by the contractor per-
3 taining to the executive agency or to another
4 executive agency that are beyond the scope of
5 the contract.

6 “(3) EXECUTIVE AGENCY ACTION FOLLOWING
7 NOTIFICATION.—The head of an executive agency
8 shall take prompt and appropriate action in response
9 to a notification by a contractor under subparagraph
10 (A) or (B) of paragraph (2), including forwarding to
11 other executive agencies any information that applies
12 to them.

13 “(d) EXEMPTIONS.—The Director may exempt any
14 executive agency payment activity from the requirement
15 of subsection (a)(1) if the Director determines that con-
16 ducting recovery audits for that payment activity would
17 not be practical or cost-effective.

18 **“§ 3563. Recovery audit model programs**

19 “(a) IN GENERAL.—The Director, after consulting
20 with executive agency heads, shall designate not less than
21 five recovery audit model programs. The designated model
22 programs shall—

23 “(1) reflect a representative range of executive
24 agencies, program activities, and payment practices;
25 and

1 “(2) continue for a period of at least one year.

2 “(b) PURPOSE.—The purpose of the model programs
3 designated under this section is to stimulate and enhance
4 recovery audits in the Federal Government by developing
5 best practices and otherwise identifying ways to make re-
6 covery audits more effective. In designating the model pro-
7 grams, the Director shall ensure that the designated pro-
8 grams complement, and in no way preempt or delay, other
9 Federal recovery audit activities.

10 **“§ 3564. Disposition of amounts collected**

11 “(a) IN GENERAL.—Notwithstanding section
12 3302(b) of this title, amounts an executive agency collects,
13 by setoff and otherwise, each fiscal year through recovery
14 audits conducted under this subchapter shall be treated
15 in accordance with this section.

16 “(b) USE FOR RECOVERY AUDIT COSTS.—Not more
17 than one quarter of the amounts collected by an executive
18 agency through recovery audits shall be available to meet
19 obligations to recovery audit contractors and to reimburse
20 applicable appropriations for other recovery audit costs in-
21 curred by the executive agency.

22 “(c) USE FOR MANAGEMENT IMPROVEMENT PRO-
23 GRAM.—Not more than one half of the amounts collected
24 by an executive agency through recovery audits—

1 “(1) shall be available to the head of the execu-
2 tive agency to carry out the management improve-
3 ment program of the agency under section 3565 of
4 this title;

5 “(2) may be credited for that purpose by the
6 agency head to any agency appropriations and funds
7 that are available for obligation at the time of collec-
8 tion; and

9 “(3) shall remain available for the same period
10 as the appropriation or fund to which credited.

11 “(d) USE FOR ORIGINAL PURPOSE.—Not more than
12 one quarter of the amounts collected—

13 “(1) shall be credited to the appropriation or
14 fund, if any, available for obligation at the time of
15 collection for the same general purposes as the ap-
16 propriation or fund from which the overpayment was
17 made; and

18 “(2) shall remain available for the same period
19 and purposes as the appropriation or fund to which
20 credited.

21 “(e) REMAINDER.—Amounts collected that are not
22 applied in accordance with subsection (b), (c), or (d) shall
23 be deposited in the Treasury as miscellaneous receipts.

24 “(f) LIMITATION OF AMOUNTS.—In accordance with
25 section 1512(d) of this title, the Director may reserve

1 amounts made available to an executive agency under sub-
2 sections (b) through (d) to the extent the Director deter-
3 mines that the full amounts otherwise available cannot be
4 used productively for the purposes for which they are
5 made available.

6 **“§ 3565. Management improvement program**

7 “(a) IN GENERAL.—

8 “(1) REQUIREMENT.—The head of each execu-
9 tive agency shall conduct a management improve-
10 ment program, consistent with rules prescribed by
11 the Director.

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

14 “(A) shall, as the first priority of the pro-
15 gram, address problems that contribute directly
16 to agency overpayments; and

17 “(B) may seek to reduce errors and waste
18 in other executive agency programs and oper-
19 ations by improving the executive agency’s staff
20 capacity, information technology, and financial
21 management.

22 “(3) INTEGRATION WITH OTHER ACTIVITIES.—
23 The head of an executive agency—

24 “(A) subject to subparagraph (B), may in-
25 tegrate the program under this section, in whole

1 or in part, with other executive agency manage-
2 ment improvement programs and activities; and

3 “(B) must retain the ability to account
4 specifically for the use of amounts made avail-
5 able under section 3465(b) of this title.

6 “(b) AWARDS.—

7 “(1) IN GENERAL.—The head of an executive
8 agency may, under the program under this section
9 and subject to the availability of appropriations, pay
10 cash awards to career employees of the executive
11 agency who have made extraordinary contributions
12 to improving the executive agency’s operations in a
13 way that demonstrably and substantially reduces
14 waste and error by the executive agency.

15 “(2) TERMS AND CONDITIONS.—An award
16 under this subsection shall be subject to the fol-
17 lowing terms and conditions:

18 “(A) An award may be granted to an indi-
19 vidual employee or to a group of employees, in
20 any amount not exceeding \$150,000 for any in-
21 dividual.

22 “(B) The award must be based on a writ-
23 ten determination by the executive agency head
24 that the awardee (or the group of awardees, col-
25 lectively) was directly and primarily responsible

1 for actions that result in tangible cost savings
2 to the executive agency of at least double the
3 amount of the award.

4 “(C) The Director must concur in any
5 award that exceeds \$50,000 to any individual.

6 “(D) The awards shall be in addition to
7 any pay and allowances to which an employee
8 is otherwise entitled, and shall not affect an
9 employee’s eligibility for other bonuses and
10 awards.

11 “(E) The award shall be subject to such
12 additional terms and conditions as may be pre-
13 scribed by the Director.

14 “(3) CAREER EMPLOYEE DEFINED.—In this
15 subsection the term ‘career employee’ means any
16 employee of an executive agency, other than—

17 “(A) a noncareer appointee, limited term
18 appointee, or limited emergency appointee (as
19 such terms are defined in section 3132(a) of
20 title 5) in the Senior Executive Service; and

21 “(B) an employee in a position that has
22 been excepted from the competitive service by
23 reason of its confidential, policy-determining,
24 policy-making, or policy-advocating character.

1 **“§ 3566. Responsibilities of the Office of Management**
2 **and Budget**

3 “(a) IN GENERAL.—The Director shall be responsible
4 for coordinating and overseeing the implementation of this
5 subchapter.

6 “(b) GUIDANCE.—In addition to the Director’s spe-
7 cific responsibilities under this subchapter, the Director
8 shall issue rules and provide support to agencies in imple-
9 menting the subchapter. The Director shall issue initial
10 rules not later than 90 days after the date of enactment
11 of this subchapter.

12 “(c) REPORTS.—

13 “(1) IN GENERAL.—Not later than one year
14 after the date of the enactment of this subchapter,
15 and annually for each of the two years thereafter,
16 the Director shall submit a report on implementa-
17 tion of the subchapter to the President, the Com-
18 mittee on Government Reform of the House of Rep-
19 resentatives, the Committee on Governmental Affairs
20 of the Senate, and the Committee on Appropriations
21 of the House of Representatives and of the Senate.

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

23 “(A) a general description and evaluation
24 of the steps taken by executive agencies to con-
25 duct recovery audits, including an inventory of

1 the programs and activities of each executive
2 agency that are subject to recovery audits;

3 “(B) a description of any exemptions from
4 recovery audits made under section 3562(d) of
5 this title;

6 “(C) a description and evaluation of the
7 recovery audit model programs conducted under
8 section 3563 of this title, that shall include—

9 “(i) an assessment of the benefits of
10 the programs;

11 “(ii) an identification of best practices
12 from the programs that could be applied to
13 other recovery audit activities; and

14 “(iii) an identification of any signifi-
15 cant problems or barriers to more effective
16 recovery audits that were experienced in
17 the model programs;

18 “(D) a description of executive agency
19 management improvement programs under sec-
20 tion 3565 of this title, including a description
21 of any awards under section 3565(b) of this
22 title; and

23 “(E) any recommendations for changes in
24 executive agency practices or law or other im-
25 provements that the Director believes would en-

1 hance the effectiveness of executive agency re-
2 covery auditing.

3 **“§ 3567. General Accounting Office reports**

4 “Not later than 60 days after issuance of each report
5 under section 3566(c) of this title, the Comptroller Gen-
6 eral of the United States shall submit a report on the im-
7 plementation of this subchapter to the Committee on Gov-
8 ernment Reform of the House of Representatives, the
9 Committee on Governmental Affairs of the Senate, the
10 Committee on Appropriations of the House of Representa-
11 tives and of the Senate, and the Director.”.

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

16 (c) DEADLINE FOR INITIATION OF RECOVERY AU-
17 DITS.—The head of each executive agency shall begin the
18 first recovery auditing under section 3562 of title 31,
19 United States Code, as amended by this section, by not
20 later than 6 months after the date of the enactment of
21 this Act.

22 (d) CLERICAL AMENDMENT.—The analysis at the be-
23 ginning of chapter 35 of title 31, United States Code, is
24 amended by adding at the end the following:

“SUBCHAPTER VI—RECOVERY AUDITS

“3561. Definitions.

- “3562. Recovery audit requirement.
- “3563. Recovery audit model programs.
- “3564. Disposition of amounts collected.
- “3565. Management improvement program.
- “3566. Responsibilities of the Office of Management and Budget.
- “3567. General Accounting Office reports.

