

Union Calendar No. 270

106TH CONGRESS
1ST SESSION

H. R. 1827

[Report No. 106-474]

A BILL

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

NOVEMBER 17, 1999

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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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

NOVEMBER 17, 1999

Additional sponsors: Mr. SESSIONS, Mr. GOODE, Mr. DOOLITTLE, Mr. MCHUGH, Mr. TERRY, Mr. SOUDER, Mr. ENGLISH, Mrs. MYRICK, Mr. SHAYS, Mr. WALDEN of Oregon, Mr. GOODLING, Mr. LATOURETTE, Mrs. KELLY, Mr. SCHAFFER, Mr. LAZIO, Mr. SAM JOHNSON of Texas, Mr. KNOLLENBERG, Mr. GILMAN, Mr. RYAN of Wisconsin, Mr. METCALF, Mr. CALVERT, Mr. STEARNS, Mr. TURNER, and Mr. FOLEY

NOVEMBER 17, 1999

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on May 17, 1999]

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 Cor-*
5 *rections Act of 1999”.*

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

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

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

15 *(2) In private industry, overpayments to pro-*
16 *viders of goods and services occur for a variety of rea-*
17 *sons, including duplicate payments, pricing errors,*
18 *and missed cash discounts, rebates, or other allow-*
19 *ances. The identification and recovery of such over-*
20 *payments, commonly referred to as “recovery audit-*
21 *ing and activity”, is an established private sector*
22 *business practice with demonstrated large financial*
23 *returns. On average, recovery auditing and activity*
24 *in the private sector identify overpayment rates of 0.1*
25 *percent of purchases audited and result in the recov-*

1 *ery of \$1,000,000 for each \$1,000,000,000 of pur-*
2 *chases.*

3 *(3) Recovery auditing and recovery activity al-*
4 *ready have been employed successfully in limited*
5 *areas of Federal activity. They have great potential*
6 *for expansion to many other Federal agencies and ac-*
7 *tivities, thereby resulting in the recovery of substan-*
8 *tial amounts of overpayments annually. Limited re-*
9 *covery audits conducted by private contractors to date*
10 *within the Department of Defense have identified er-*
11 *rors averaging 0.4 percent of Federal payments au-*
12 *dited, or \$4,000,000 for every \$1,000,000,000 of pay-*
13 *ments. If fully implemented within the Federal Gov-*
14 *ernment, recovery auditing and recovery activity have*
15 *the potential to recover billions of dollars in Federal*
16 *overpayments annually.*

17 *(b) PURPOSES.—The purposes of this Act are the fol-*
18 *lowing:*

19 *(1) To ensure that overpayments made by the*
20 *Federal Government that would otherwise remain un-*
21 *detected are identified and recovered.*

22 *(2) To require the use of recovery audit and re-*
23 *covery activity by Federal agencies.*

24 *(3) To provide incentives and resources to im-*
25 *prove Federal management practices with the goal of*

1 *significantly reducing Federal overpayment rates and*
2 *other waste and error in Federal programs.*

3 **SEC. 3. ESTABLISHMENT OF RECOVERY AUDIT REQUIRE-**
4 **MENT.**

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

8 **“SUBCHAPTER VI—RECOVERY AUDITS**
9 **“§ 3561. Definitions**

10 *“In this subchapter, the following definitions apply:*

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

13 *“(2) DISCLOSE.—The term ‘disclose’ means to*
14 *release, publish, transfer, provide access to, or other-*
15 *wise divulge individually identifiable information to*
16 *any person other than the individual who is the sub-*
17 *ject of the information.*

18 *“(3) INDIVIDUALLY IDENTIFIABLE INFORMA-*
19 *TION.—The term ‘individually identifiable informa-*
20 *tion’ means any information, whether oral or re-*
21 *corded in any form or medium, that identifies the in-*
22 *dividual, or with respect to which there is a reason-*
23 *able basis to believe that the information can be used*
24 *to identify the individual.*

1 “(4) *OVERSIGHT*.—The term ‘oversight’ means
2 activities by a Federal, State, or local governmental
3 entity, or by another entity acting on behalf of such
4 a governmental entity, to enforce laws relating to, in-
5 vestigate, or regulate payment activities, recovery ac-
6 tivities, and recovery audit activities.

7 “(5) *PAYMENT ACTIVITY*.—The term ‘payment
8 activity’ means an executive agency activity that en-
9 tails making payments to vendors or other nongovern-
10 mental entities that provide property or services for
11 the direct benefit and use of an executive agency.

12 “(6) *RECOVERY AUDIT*.—The term ‘recovery
13 audit’ means a financial management technique used
14 to identify overpayments made by executive agencies
15 with respect to vendors and other entities in connec-
16 tion with a payment activity, including overpay-
17 ments that result from any of the following:

18 “(A) Duplicate payments.

19 “(B) Pricing errors.

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

22 “(D) Inadvertent errors.

23 “(7) *RECOVERY ACTIVITY*.—The term ‘recovery
24 activity’ means activity otherwise authorized by law,

1 including chapter 37 of this title, to attempt to collect
2 an identified overpayment—

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

5 “(B) through established professional prac-
6 tices.

7 **“§ 3562. Recovery audit requirement**

8 “(a) *IN GENERAL.*—Except as exempted by the Direc-
9 tor under section 3565(d) of this title, the head of each execu-
10 tive agency—

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

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

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

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

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

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

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

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

23 “(2) The head of an executive agency may conduct re-
24 covery audits of payment activities for additional preceding

1 *fiscal years if determined by the agency head to be practical*
2 *and cost-effective.*

3 “(d) *RECOVERY AUDIT CONTRACTS.*—

4 “(1) *AUTHORITY TO USE CONTINGENCY CON-*
5 *TRACTS.*—*Notwithstanding section 3302(b) of this*
6 *title, as consideration for performance of any recovery*
7 *audit procured by an executive agency, the executive*
8 *agency may pay the contractor an amount equal to*
9 *a percentage of the total amount collected by the*
10 *United States as a result of overpayments identified*
11 *by the contractor in the audit.*

12 “(2) *ADDITIONAL FUNCTIONS OF CONTRACTOR.*—

13 (A) *In addition to performance of a recovery audit,*
14 *a contract for such performance may authorize the*
15 *contractor (subject to subparagraph (B)) to—*

16 “(i) *notify any person of possible overpay-*
17 *ments made to the person and identified in the*
18 *recovery audit under the contract; and*

19 “(ii) *respond to questions concerning such*
20 *overpayments.*

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

23 “(i) *the authority of the head of an execu-*
24 *tive agency under the Contract Disputes Act of*
25 *1978 and other applicable laws, including the*

1 *authority to initiate litigation or referrals for*
2 *litigation; or*

3 “(i) *the requirements of sections 3711,*
4 *3716, 3718, and 3720 of this title that the head*
5 *of an agency resolve disputes, compromise or ter-*
6 *minate overpayment claims, collect by setoff, and*
7 *otherwise engage in recovery activity with re-*
8 *spect to overpayments identified by the recovery*
9 *audit.*

10 “(3) *LIMITATION ON AUTHORITY.—Nothing in*
11 *this subchapter shall be construed to authorize a con-*
12 *tractor with an executive agency to require the pro-*
13 *duction of any record or information by any person*
14 *other than an officer, employee, or agent of the execu-*
15 *tive agency.*

16 “(4) *REQUIRED CONTRACT TERMS AND CONDI-*
17 *TIONS.—The head of an executive agency shall include*
18 *in each contract for procurement of performance of a*
19 *recovery audit requirements that the contractor*
20 *shall—*

21 “(A) *protect from disclosure otherwise con-*
22 *fidential business information and financial in-*
23 *formation;*

24 “(B) *provide to the head of the executive*
25 *agency and the Inspector General of the executive*

1 *agency periodic reports on conditions giving rise*
2 *to overpayments identified by the contractor and*
3 *any recommendations on how to mitigate such*
4 *conditions;*

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

11 “(D) *promptly notify the head of the execu-*
12 *tive agency and the Inspector General of the ex-*
13 *ecutive agency of any indication of fraud or*
14 *other criminal activity discovered in the course*
15 *of the audit.*

16 “(5) *EXECUTIVE AGENCY ACTION FOLLOWING NO-*
17 *TIFICATION.—The head of an executive agency shall*
18 *take prompt and appropriate action in response to a*
19 *notification by a contractor pursuant to the require-*
20 *ments under paragraph (4), including forwarding to*
21 *other executive agencies any information that applies*
22 *to them.*

23 “(6) *CONTRACTING REQUIREMENTS.—Prior to*
24 *contracting for any recovery audit, the head of an ex-*
25 *ecutive agency shall conduct a public-private cost*

1 *comparison process. The outcome of the cost compari-*
2 *son process shall determine whether the recovery audit*
3 *is performed in-house or by a contractor.*

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

8 “(f) *PRIVACY PROTECTIONS.*—

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

19 “(B) *Any person that violates subparagraph (A)*
20 *shall be liable for any damages (including nonpecu-*
21 *niary damages, costs, and attorneys fees) caused by*
22 *the violation.*

23 “(2) *DESTRUCTION OR RETURN OF INFORMA-*
24 *TION.*—*Upon the conclusion of the matter or need for*
25 *which individually identifiable information was dis-*

1 *closed in the course of recovery auditing or recovery*
2 *activity under this chapter performed by a non-*
3 *governmental entity, the nongovernmental entity shall*
4 *either destroy the individually identifiable informa-*
5 *tion or return it to the person from whom it was ob-*
6 *tained, unless another applicable law requires reten-*
7 *tion of the information.*

8 **“§ 3563. Disposition of amounts collected**

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

14 “(b) *USE FOR RECOVERY AUDIT COSTS.*—*Amounts re-*
15 *ferred to in subsection (a) shall be available to the executive*
16 *agency—*

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

19 “(2) *to reimburse any applicable appropriation*
20 *for other recovery audit costs incurred by the execu-*
21 *tive agency with respect to the audit.*

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

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

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

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

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

12 “(1) 50 percent of such amount; plus

13 “(2) such other amounts as remain after the ap-
14 plication of subsections (b) and (c).

15 “(e) *LIMITATION ON APPLICATION.*—

16 “(1) *IN GENERAL.*—This section shall not apply
17 to amounts collected through recovery audits and re-
18 covery activity to the extent that such application
19 would be inconsistent with another provision of law
20 that authorizes crediting of the amounts to a non-
21 appropriated fund instrumentality, revolving fund,
22 working capital fund, trust fund, or other fund or ac-
23 count.

24 “(2) *SUBSECTIONS (c) AND (d).*—Subsections (c)
25 and (d) shall not apply to amounts collected through

1 *recovery audits and recovery activity, to the extent*
2 *that such amounts are derived from an appropriation*
3 *or fund that remains available for obligation at the*
4 *time the amounts are collected.*

5 **“§ 3564. Management improvement program**

6 “(a) *CONDUCT OF PROGRAM.*—

7 “(1) *REQUIRED PROGRAMS.*—*The head of each*
8 *executive agency that is required to conduct recovery*
9 *audits under section 3562 of this title shall conduct*
10 *a management improvement program under this sec-*
11 *tion, consistent with guidelines prescribed by the Di-*
12 *rector.*

13 “(2) *DISCRETIONARY PROGRAMS.*—*The head of*
14 *any other executive agency that conducts recovery au-*
15 *ditions under section 3562 that meet the standards*
16 *issued by the Director under section 3565(b)(2) may*
17 *conduct a management improvement program under*
18 *this section.*

19 “(b) *PROGRAM FEATURES.*—*In conducting the pro-*
20 *gram, the head of the executive agency—*

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

24 “(2) *may seek to reduce errors and waste in*
25 *other executive agency programs and operations by*

1 *improving the executive agency's staff capacity, infor-*
2 *mation technology, and financial management.*

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

5 *“(1) subject to paragraph (2), may integrate the*
6 *program under this section, in whole or in part, with*
7 *other management improvement programs and activi-*
8 *ties of that agency or other executive agencies; and*

9 *“(2) must retain the ability to account specifi-*
10 *cally for the use of amounts made available under sec-*
11 *tion 3563 of this title.*

12 **“§ 3565. Responsibilities of the Office of Management**
13 **and Budget**

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

16 *“(b) GUIDANCE.—*

17 *“(1) IN GENERAL.—The Director, in consultation*
18 *with the Chief Financial Officers Council and the*
19 *President's Council on Integrity and Efficiency, shall*
20 *issue guidance and provide support to agencies in im-*
21 *plementing the subchapter. The Director shall issue*
22 *initial guidance not later than 180 days after the*
23 *date of enactment of the Government Waste Correc-*
24 *tions Act of 1999.*

1 “(2) *RECOVERY AUDIT STANDARDS.*—*The Direc-*
2 *tor shall include in the initial guidance under this*
3 *subsection standards for the performance of recovery*
4 *audits under this subchapter, that are developed in*
5 *consultation with the Comptroller General of the*
6 *United States and private sector experts on recovery*
7 *audits.*

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

11 “(d) *EXEMPTIONS.*—

12 “(1) *IN GENERAL.*—*The Director may exempt an*
13 *executive agency, in whole or in part, from the re-*
14 *quirement to conduct recovery audits under section*
15 *3562(a)(1) of this title if the Director determines that*
16 *compliance with such requirement—*

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

18 “(B) *would not be cost-effective.*

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

25 “(e) *REPORTS.*—

1 “(1) *IN GENERAL.*—Not later than 1 year after
2 the date of the enactment of the Government Waste
3 Corrections Act of 1999, and annually for each of the
4 2 years thereafter, the Director shall submit a report
5 on implementation of the subchapter to the President,
6 the Committee on Government Reform of the House of
7 Representatives, the Committee on Governmental Af-
8 fairs of the Senate, and the Committee on Appropria-
9 tions of the House of Representatives and of the Sen-
10 ate.

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

12 “(A) a general description and evaluation
13 of the steps taken by executive agencies to con-
14 duct recovery audits, including an inventory of
15 the programs and activities of each executive
16 agency that are subject to recovery audits;

17 “(B) an assessment of the benefits of recov-
18 ery auditing and recovery activity, including
19 amounts identified and recovered (including by
20 administrative setoffs);

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

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

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

6 “(F) a description of executive agency man-
7 agement improvement programs under section
8 3564 of this title; and

9 “(G) any recommendations for changes in
10 executive agency practices or law or other im-
11 provements that the Director believes would en-
12 hance the effectiveness of executive agency recov-
13 ery auditing.

14 **“§ 3566. General Accounting Office reports**

15 “Not later than 60 days after issuance of each report
16 under section 3565(e) of this title, the Comptroller General
17 of the United States shall submit a report on the implemen-
18 tation of this subchapter to the Committee on Government
19 Reform of the House of Representatives, the Committee on
20 Governmental Affairs of the Senate, the Committee on Ap-
21 propriations of the House of Representatives and of the Sen-
22 ate, and the Director.”.

23 (b) APPLICATION TO ALL EXECUTIVE AGENCIES.—
24 Section 3501 of title 31, United States Code, is amended

1 by inserting “and subchapter VI of this chapter” after “sec-
2 tion 3513”.

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

9 (d) *CLERICAL AMENDMENT.—The analysis at the be-*
10 *ginning of chapter 35 of title 31, United States Code, is*
11 *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.”.