

SEC. 831. IDENTIFICATION OF ERRORS MADE BY EXECUTIVE AGENCIES IN PAYMENTS TO CONTRACTORS AND RECOVERY OF AMOUNTS ERRONEOUSLY PAID.

(a) PROGRAM REQUIRED- (1) Chapter 35 of title 31, United States Code, is amended by adding at the end the following new subchapter:

SUBCHAPTER VI--RECOVERY AUDITS

Sec. 3561. Identification of errors made by executive agencies in payments to contractors and recovery of amounts erroneously paid

(a) PROGRAM REQUIRED- The head of each executive agency that enters into contracts with a total value in excess of \$500,000,000 in a fiscal year shall carry out a cost-effective program for identifying any errors made in paying the contractors and for recovering any amounts erroneously paid to the contractors.

(b) RECOVERY AUDITS AND ACTIVITIES- A program of an executive agency under subsection (a) shall include recovery audits and recovery activities. The head of the executive agency shall determine, in accordance with guidance provided under subsection (c), the classes of contracts to which recovery audits and recovery activities are appropriately applied.

(c) OMB GUIDANCE- The Director of the Office of Management and Budget shall issue guidance for the conduct of programs under subsection (a). The guidance shall include the following:

- (1) Definitions of the terms `recovery audit' and `recovery activity' for the purposes of the programs.
- (2) The classes of contracts to which recovery audits and recovery activities are appropriately applied under the programs.
- (3) Protections for the confidentiality of--
 - (A) sensitive financial information that has not been released for use by the general public; and
 - (B) information that could be used to identify a person.
- (4) Policies and procedures for ensuring that the implementation of the programs does not result in duplicative audits of contractor records.
- (5) Policies regarding the types of contracts executive agencies may use for the procurement of recovery services, including guidance for use, in appropriate circumstances, of a contingency contract pursuant to which the head of an executive agency may pay a contractor an amount equal to a percentage of the total amount collected for the United States pursuant to that contract.
- (6) Protections for a contractor's records and facilities through restrictions on the authority of a contractor under a contract for the procurement of recovery services for an executive agency--
 - (A) to require the production of any record or information by any person other than an officer, employee, or agent of the executive agency;
 - (B) to establish, or otherwise have, a physical presence on the property or premises of any private sector entity for the purposes of performing the contract; or
 - (C) to act as agents for the Government in the recovery of funds erroneously paid to contractors.
- (7) Policies for the appropriate types of management improvement programs authorized by section 3564 of this title that executive agencies may carry out to address overpayment problems and the recovery of overpayments.

Sec. 3562. Disposition of recovered funds

(a) AVAILABILITY OF FUNDS FOR RECOVERY AUDITS AND ACTIVITIES PROGRAM- Funds collected under a program carried out by an executive agency under section 3561 of this title shall be available to the executive agency for the following purposes:

(1) To reimburse the actual expenses incurred by the executive agency in the administration of the program.

(2) To pay contractors for services under the program in accordance with the guidance issued under section 3561(c)(5) of this title.

(b) FUNDS NOT USED FOR PROGRAM- Any amounts erroneously paid by an executive agency that are recovered under such a program of an executive agency and are not used to reimburse expenses or pay contractors under subsection (a)--

(1) shall be credited to the appropriations from which the erroneous payments were made, shall be merged with other amounts in those appropriations, and shall be available for the purposes and period for which such appropriations are available; or

(2) if no such appropriation remains available, shall be deposited in the Treasury as miscellaneous receipts.

(c) PRIORITY OF OTHER AUTHORIZED DISPOSITIONS- Notwithstanding subsection (b), the authority under such subsection may not be exercised to use, credit, or deposit funds collected under such a program as provided in that subsection to the extent that any other provision of law requires or authorizes the crediting of such funds to a nonappropriated fund instrumentality, revolving fund, working-capital fund, trust fund, or other fund or account.

Sec. 3563. Sources of recovery services

(a) CONSIDERATION OF AVAILABLE RECOVERY RESOURCES- (1) In carrying out a program under section 3561 of this title, the head of an executive agency shall consider all resources available to that official to carry out the program.

(2) The resources considered by the head of an executive agency for carrying out the program shall include the resources available to the executive agency for such purpose from the following sources:

(A) The executive agency.

(B) Other departments and agencies of the United States.

(C) Private sector sources.

(b) COMPLIANCE WITH APPLICABLE LAW AND REGULATIONS- Before entering into a contract with a private sector source for the performance of services under a program of the executive agency carried out under section 3561 of this title, the head of an executive agency shall comply with--

(1) any otherwise applicable provisions of Office of Management and Budget Circular A-76; and

(2) any other applicable provision of law or regulation with respect to the selection between employees of the United States and private sector sources for the performance of services.

Sec. 3564. Management improvement programs

In accordance with guidance provided by the Director of the Office of Management and Budget under section 3561 of this title, the head of an executive agency required to carry out a program under such section 3561 may carry out program for improving management processes within the executive agency--

(1) to address problems that contribute directly to the occurrence of errors in the paying of contractors of the executive agency; or

(2) to improve the recovery of overpayments due to the agency.

Sec. 3565. Relationship to authority of inspectors general

Nothing in this subchapter shall be construed as impairing the authority of an Inspector General under the Inspector General Act of 1978 or any other provision of law.

Sec. 3566. Privacy protections

Any nongovernmental entity that, in the course of recovery auditing or recovery activity under this subchapter, obtains information that identifies an individual or with respect to which there is a reasonable basis to believe that the information can be used to

identify an individual, may not disclose the information for any purpose other than such recovery auditing or recovery activity and governmental oversight of such activity, unless disclosure for that other purpose is authorized by the individual to the executive agency that contracted for the performance of the recovery auditing or recovery activity.

Sec. 3567. Definition of executive agency

(a) Notwithstanding section 102 of this title, in this subchapter, the term `executive agency' has the meaning given that term in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

(b) REPORTS-

(1) Not later than 30 months after the date of the enactment of this Act, and annually for each of the first two years following the year of the first report, the Director of the Office of Management and Budget shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate, a report on the implementation of subchapter VI of chapter 35 of title 31, United States Code (as added by subsection (a)).

(2) Each report shall include--

- (A) a general description and evaluation of the steps taken by the heads of executive agencies to carry out the programs under such subchapter, including any management improvement programs carried out under section 3564 of such title 31;
- (B) the costs incurred by executive agencies to carry out the programs under such subchapter; and
- (C) the amounts recovered under the programs under such subchapter.

(c) CONFORMING AMENDMENT- Section 3501 of such title is amended by inserting `and subchapter VI' after `section 3513'.