

107TH CONGRESS
1ST SESSION

H. R. 2547

To require certain executive agencies to carry out a cost-effective program for identifying any errors made in paying contractors and for recovering any amounts erroneously paid to contractors.

IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2001

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

A BILL

To require certain executive agencies to carry out a cost-effective program for identifying any errors made in paying contractors and for recovering any amounts erroneously paid to contractors.

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 “Erroneous Payments
5 Recovery Act of 2001”.

1 **SEC. 2. IDENTIFICATION OF ERRORS MADE BY EXECUTIVE**
2 **AGENCIES IN PAYMENTS TO CONTRACTORS**
3 **AND RECOVERY OF AMOUNTS ERRONEOUSLY**
4 **PAID.**

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

11 (b) RECOVERY AUDITS AND ACTIVITIES.—A program
12 of an executive agency under subsection (a) shall include
13 recovery audits and recovery activities. The head of the
14 executive agency shall determine, in accordance with guid-
15 ance provided under subsection (c), the classes of con-
16 tracts to which recovery audits and recovery activities are
17 appropriately applied.

18 (c) OMB GUIDANCE.—The Director of the Office of
19 Management and Budget shall issue guidance for the con-
20 duct of programs under subsection (a). The guidance shall
21 include the following:

22 (1) Definitions of the terms “recovery audit”
23 and “recovery activity” for the purposes of the pro-
24 grams.

1 (2) The classes of contracts to which recovery
2 audits and recovery activities are appropriately ap-
3 plied under the programs.

4 (3) Protections for the confidentiality of—

5 (A) sensitive financial information that has
6 not been released for use by the general public;
7 and

8 (B) information that could be used to iden-
9 tify a person.

10 (4) Policies and procedures for ensuring that
11 the implementation of the programs does not result
12 in duplicative audits of contractor records.

13 (5) Policies regarding the types of contracts ex-
14 ecutive agencies may use for the procurement of re-
15 covery services, including guidance for use, in appro-
16 priate circumstances, of a contingency contract pur-
17 suant to which the head of an executive agency may
18 pay a contractor an amount equal to a percentage
19 of the total amount collected for the United States
20 pursuant to that contract.

21 (6) Protections for a contractor's records and
22 facilities through restrictions on the authority of a
23 contractor under a contract for the procurement of
24 recovery services for an executive agency—

1 (A) to require the production of any record
2 or information by any person other than an of-
3 ficer, employee, or agent of the executive
4 agency;

5 (B) to establish, or otherwise have, a phys-
6 ical presence on the property or premises of any
7 private sector entity for the purposes of per-
8 forming the contract; or

9 (C) to act as agents for the Government in
10 the recovery of funds erroneously paid to con-
11 tractors.

12 (7) Policies for the appropriate types of man-
13 agement improvement programs authorized by sec-
14 tion 5 that executive agencies may carry out to ad-
15 dress overpayment problems and the recovery of
16 overpayments.

17 **SEC. 3. DISPOSITION OF RECOVERED FUNDS.**

18 (a) AVAILABILITY OF FUNDS FOR RECOVERY AUDITS
19 AND ACTIVITIES PROGRAM.—Funds collected under a pro-
20 gram carried out by an executive agency under section 2
21 shall be available to the executive agency, without further
22 appropriation, for the following purposes:

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

1 (2) To pay contractors for services under the
2 program in accordance with the guidance issued
3 under section 2(c)(5).

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

9 (1) shall be credited to the appropriations from
10 which the erroneous payments were made that re-
11 main available for obligation as of the time such
12 amounts were collected, shall be merged with other
13 amounts in those appropriations, and shall be avail-
14 able for the purposes and period for which such ap-
15 propriations are available; or

16 (2) if no such appropriation remains available
17 for obligation at that time, shall be disposed of as
18 provided in subsection (c).

19 (c) OTHER DISPOSITIONS.—Of the total amount col-
20 lected under such a program of an executive agency that
21 is to be disposed of under this subsection—

22 (1) up to 25 percent of such amount may be ex-
23 pended by the head of the executive agency for car-
24 rying out any management improvement program of
25 the executive agency under section 5; and

1 (2) the remainder of that total amount, includ-
2 ing any amount not expended under paragraph (1),
3 shall be deposited in the Treasury as miscellaneous
4 receipts.

5 (d) **PRIORITY OF OTHER AUTHORIZED DISPOSI-**
6 **TIONS.**—Notwithstanding subsections (b) and (c), the au-
7 thority under such subsections may not be exercised to
8 use, credit, or deposit funds collected under such a pro-
9 gram as provided in those subsections to the extent that
10 any other provision of law requires or authorizes the cred-
11 iting of such funds to a nonappropriated fund instrumen-
12 tality, revolving fund, working-capital fund, trust fund, or
13 other fund or account.

14 **SEC. 4. SOURCES OF RECOVERY SERVICES.**

15 (a) **CONSIDERATION OF AVAILABLE RECOVERY RE-**
16 **SOURCES.**—(1) In carrying out a program under section
17 2, the head of an executive agency shall consider all re-
18 sources available to that official to carry out the program.

19 (2) The resources considered by the head of an execu-
20 tive agency for carrying out the program shall include the
21 resources available to the executive agency for such pur-
22 pose from the following sources:

23 (A) The executive agency.

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

1 (C) Private sector sources.

2 (b) COMPLIANCE WITH APPLICABLE LAW AND REG-
3 ULATIONS.—Before entering into a contract with a private
4 sector source for the performance of services under a pro-
5 gram of the executive agency carried out under section 2,
6 the head of an executive agency shall comply with—

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

9 (2) any other applicable provision of law or reg-
10 ulation with respect to the selection between employ-
11 ees of the United States and private sector sources
12 for the performance of services.

13 **SEC. 5. MANAGEMENT IMPROVEMENT PROGRAMS.**

14 In accordance with guidance provided by the Director
15 of the Office of Management and Budget under section
16 2, the head of an executive agency required to carry out
17 a program under section 2 may carry out a program for
18 improving management processes within the executive
19 agency—

20 (1) to address problems that contribute directly
21 to the occurrence of errors in the paying of contrac-
22 tors of the executive agency; or

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

1 **SEC. 6. REPORTS.**

2 (a) REQUIREMENT FOR REPORTS.—Not later than
3 30 months after the date of the enactment of this Act,
4 and annually for each of the first two years following the
5 year of the first report, the Director of the Office of Man-
6 agement and Budget shall submit to the House Committee
7 on Government Reform and the Senate Committee on
8 Governmental Affairs, a report on the implementation of
9 this Act.

10 (b) CONTENT.—Each report shall include—

11 (1) a general description and evaluation of the
12 steps taken by the heads of executive agencies to
13 carry out the programs under this Act, including
14 any management improvement programs carried out
15 under section 5;

16 (2) the costs incurred by executive agencies to
17 carry out the programs under this Act; and

18 (3) the amounts recovered under the programs
19 under this Act.

20 **SEC. 7. RELATIONSHIP TO AUTHORITY OF INSPECTORS**

21 **GENERAL.**

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

1 **SEC. 8. PRIVACY PROTECTIONS.**

2 (a) PROHIBITION.—Any nongovernmental entity
3 that, in the course of recovery auditing or recovery activity
4 under this Act, obtains information that identifies an indi-
5 vidual or with respect to which there is a reasonable basis
6 to believe that the information can be used to identify an
7 individual, may not disclose the information for any pur-
8 pose other than such recovery auditing or recovery activity
9 and governmental oversight of such activity, unless disclo-
10 sure for that other purpose is authorized by the individual
11 to the executive agency that contracted for the perform-
12 ance of the recovery auditing or recovery activity.

13 (b) LIABILITY.—Any person that violates subsection
14 (a) shall be liable for any damages (including nonpecu-
15 niary damages), costs, and attorneys fees incurred by the
16 individual as a result of the violation.

17 **SEC. 9. DEFINITION.**

18 In this Act, the term “executive agency” has the
19 meaning given the term in section 4(1) of the Office of
20 Federal Procurement Policy Act (41 U.S.C. 403(1)).

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