

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1827, AS REPORTED
OFFERED BY MR. BURTON OF INDIANA**

Strike all after the enacting clause and insert the following:

1 SECTION. 1. SHORT TITLE.

2 This Act may be cited as the “Government Waste
3 Corrections Act of 2000”.

4 SEC. 2. FINDINGS AND PURPOSES.

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

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

14 (2) In private industry, overpayments to pro-
15 viders of goods and services occur for a variety of
16 reasons, including duplicate payments, pricing er-
17 rors, and missed cash discounts, rebates, or other al-
18 lowances. The identification and recovery of such
19 overpayments, commonly referred to as “recovery

1 auditing and activity”, is an established private sec-
2 tor business practice with demonstrated large finan-
3 cial returns. On average, recovery auditing and ac-
4 tivity in the private sector identify overpayment
5 rates of 0.1 percent of purchases audited and result
6 in the recovery of \$1,000,000 for each
7 \$1,000,000,000 of purchases.

8 (3) Recovery auditing and recovery activity al-
9 ready have been employed successfully in limited
10 areas of Federal activity. They have great potential
11 for expansion to many other Federal agencies and
12 activities, thereby resulting in the recovery of sub-
13 stantial amounts of overpayments annually. Limited
14 recovery audits conducted by private contractors to
15 date within the Department of Defense have identi-
16 fied errors averaging 0.4 percent of Federal pay-
17 ments audited, or \$4,000,000 for every
18 \$1,000,000,000 of payments. If fully implemented
19 within the Federal Government, recovery auditing
20 and recovery activity have the potential to recover
21 billions of dollars in Federal overpayments annually.

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

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

4 (2) To require the use of recovery audit and re-
5 covery activity by Federal agencies.

6 (3) To provide incentives and resources to im-
7 prove Federal management practices with the goal
8 of significantly reducing Federal overpayment rates
9 and other waste and error in Federal programs.

10 **SEC. 3. ESTABLISHMENT OF RECOVERY AUDIT REQUIRE-**
11 **MENT.**

12 (a) ESTABLISHMENT OF REQUIREMENT.—Chapter
13 35 of title 31, United States Code, is amended by adding
14 at the end the following:

15 “SUBCHAPTER VI—RECOVERY AUDITS

16 **“§ 3561. Definitions**

17 “In this subchapter, the following definitions apply:

18 “(1) AMOUNTS COLLECTED.—The term
19 ‘amounts collected’ means monies actually received
20 by the United States Government.

21 “(2) CHIEF FINANCIAL OFFICER.—The term
22 ‘Chief Financial Officer’ means the official estab-
23 lished by section 901 of this title, or the functional
24 equivalent of such official in the case of any agency

1 that does not have a Chief Financial Officer under
2 that section.

3 “(3) DIRECTOR.—The term ‘Director’ means
4 the Director of the Office of Management and Budg-
5 et.

6 “(4) DISCLOSE.—The term ‘disclose’ means to
7 release, publish, transfer, provide access to, or other-
8 wise divulge individually identifiable information to
9 any person other than the individual who is the sub-
10 ject of the information.

11 “(5) FACIAL-DISCREPANCY PAYMENT ERROR.—
12 The term ‘facial-discrepancy payment error’—

13 “(A) except as provided in subparagraph
14 (B), means any payment error that results
15 from, is substantiated by, or is identified as a
16 result of information contained on any invoice,
17 delivery order, bill of lading, statement of ac-
18 count, or other document submitted to the Gov-
19 ernment by a supplier of goods or services in
20 the usual and customary conduct of business, or
21 as required by law or contract to substantiate
22 payment for such goods or services, including
23 any such document submitted electronically;
24 and

1 “(B) does not include payment errors iden-
2 tified, resulting, or supported from documents
3 that are—

4 “(i) records of a proprietary nature,
5 maintained solely by the supplier of goods
6 or services;

7 “(ii) not specifically required to be
8 provided to the Government by contract,
9 law, regulation, or to substantiate pay-
10 ment;

11 “(iii) submitted to the Government for
12 evaluative purposes prior to the award of a
13 contract, as part of the evaluation and
14 award process.

15 Records, documents, price lists, or other vendor ma-
16 terial published and available in the public domain
17 shall not be considered sources of facial-discrepancy
18 payment errors, but may be used to substantiate,
19 clarify, or validate facial-discrepancy payment errors
20 otherwise identified.

21 “(6) INDIVIDUALLY IDENTIFIABLE INFORMA-
22 TION.—The term ‘individually identifiable informa-
23 tion’ means any information, whether oral or re-
24 corded in any form or medium, that identifies the in-
25 dividual or with respect to which there is a reason-

1 able basis to believe that the information can be
2 used to identify the individual.

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

9 “(8) PAYMENT ACTIVITY.—The term ‘payment
10 activity’ means an executive agency activity that en-
11 tails making payments to vendors or other non-
12 governmental entities that provide property or serv-
13 ices for the direct benefit and use of an executive
14 agency.

15 “(9) RECOVERY AUDIT.—The term ‘recovery
16 audit’ means a financial management technique ap-
17 plied internally by Government employees, or by pri-
18 vate sector contractors, and used by executive agen-
19 cies to audit their internal records to identify facial-
20 discrepancy payment errors made by those executive
21 agencies to vendors and other entities in connection
22 with a payment activity, including facial-discrepancy
23 payment errors that result from any of the following:

24 “(A) Duplicate payments.

25 “(B) Invoice errors.

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

3 “(D) Any other facial-discrepancy errors
4 resulting in inaccurate payments.

5 “(10) RECOVERY ACTIVITY.—The term ‘recov-
6 ery activity’ means executive agency activity other-
7 wise authorized by law, including chapter 37 of this
8 title, to attempt to collect an identified overpayment.

9 “(11) RECOVERY AUDIT CONTRACTOR.—The
10 term ‘recovery audit contractor’ means any person
11 who has been hired by an executive agency to per-
12 form a recovery audit pursuant to a recovery audit
13 contract.

14 **“§ 3562. Recovery audit requirement**

15 “(a) IN GENERAL.—Except as exempted under sec-
16 tion 3565(d) of this title, the head of each executive
17 agency—

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

23 “(2) may conduct for any fiscal year recovery
24 audits and recovery activity with respect to payment
25 activities of the agency if such payment activities for

1 the fiscal year total less than \$500,000,000 (ad-
2 justed by the Director annually for inflation); and

3 “(3) may request that the Director exempt a
4 payment activity, in whole or in part, from the re-
5 quirement to conduct recovery audits under para-
6 graph (1) if the head of the executive agency deter-
7 mines and can demonstrate that compliance with
8 such requirement—

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

11 “(B) would not, or would no longer be,
12 cost-effective.

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

16 “(1) shall consult and coordinate with the Chief
17 Financial Officer and the Inspector General of the
18 agency to avoid any duplication of effort;

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

22 “(3) may conduct recovery audits and recovery
23 activity internally in accordance with the standards
24 issued by the Director under section 3565(b)(2) of

1 this title, or by procuring performance of recovery
2 audits, or by any combination thereof; and

3 “(4) shall ensure that such recovery audits and
4 recovery activity are carried out consistent with the
5 standards issued by the Director under section
6 3565(b)(2) of this subchapter.

7 “(c) SCOPE OF AUDITS.—

8 “(1) IN GENERAL.—Each recovery audit of a
9 payment activity under this section shall cover pay-
10 ments made by the payment activity in the preceding
11 fiscal year, except that the first recovery audit of a
12 payment activity shall cover payments made during
13 the 2 consecutive fiscal years preceding the date of
14 the enactment of the Government Waste Corrections
15 Act of 2000.

16 “(2) ADDITIONAL FISCAL YEARS.—The head of
17 an executive agency may conduct recovery audits of
18 payment activities for additional preceding fiscal
19 years if determined by the agency head to be prac-
20 tical and cost-effective subject to any statute of limi-
21 tations constraints regarding recordkeeping under
22 applicable law.

23 “(d) RECOVERY AUDIT CONTRACTS.—

24 “(1) AUTHORITY TO USE CONTINGENCY CON-
25 TRACTS.—Notwithstanding section 3302(b) of this

1 title, as consideration for performance of any recovery
2 audit procured by an executive agency, the executive
3 agency may pay the recovery audit contractor
4 an amount equal to a percentage of the total amount
5 collected by the United States as a result of overpay-
6 ments identified by the contractor in the audit.

7 “(2) ADDITIONAL FUNCTIONS OF RECOVERY
8 AUDIT CONTRACTOR.—

9 “(A) IN GENERAL.—In addition to per-
10 formance of a recovery audit, a contract for
11 such performance may authorize the recovery
12 audit contractor (subject to subparagraph (B))
13 to—

14 “(i) notify any person of possible over-
15 payments made to the person and identi-
16 fied in the recovery audit under the con-
17 tract; and

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

20 “(B) LIMITATION.—A contract for per-
21 formance of a recovery audit shall not affect—

22 “(i) the authority of the head of an
23 executive agency, or any other person,
24 under the Contract Disputes Act of 1978
25 and other applicable laws, including the

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

3 “(ii) the requirements of sections
4 3711, 3716, 3718, and 3720 of this title
5 that the head of an agency resolve dis-
6 putes, compromise, or terminate overpay-
7 ment claims, collect by setoff, and other-
8 wise engage in recovery activity with re-
9 spect to overpayments identified by the re-
10 covery audit.

11 “(3) LIMITATION ON AUTHORITY.—Nothing in
12 this subchapter shall be construed to authorize a re-
13 covery audit contractor with an executive agency—

14 “(A) to require the production of any
15 record or information by any person other than
16 an officer, employee, or agent of the executive
17 agency; and

18 “(B) to establish, or otherwise have a
19 physical presence on the property or premises
20 of any private sector entity as part of its con-
21 tractual obligations to an executive agency.

22 “(4) REQUIRED CONTRACT TERMS AND CONDI-
23 TIONS.—The head of an executive agency shall in-
24 clude in each contract for procurement of perform-

1 ance of a recovery audit requirements that the con-
2 tractor shall—

3 “(A) protect from improper use, and pro-
4 tect from disclosure to any person who is inter-
5 nal or external to the firm of the recovery audit
6 contractor and who is not directly involved in
7 the identification or recovery of overpayments,
8 otherwise confidential or proprietary business
9 information and financial information that may
10 be viewed or obtained in the course of carrying
11 out a recovery audit for an executive agency;

12 “(B) provide to the head of the executive
13 agency and the Inspector General of the execu-
14 tive agency periodic reports on conditions giving
15 rise to overpayments identified by the recovery
16 audit contractor and any recommendations on
17 how to mitigate such conditions;

18 “(C) notify the head of the executive agen-
19 cy and the Inspector General of the executive
20 agency of any overpayments identified by the
21 contractor pertaining to the executive agency or
22 to another executive agency that are beyond the
23 scope of the contract; and

24 “(D) promptly notify the head of the execu-
25 tive agency and the Inspector General of the

1 executive agency of any indication of fraud or
2 other criminal activity discovered in the course
3 of the audit.

4 “(5) EXECUTIVE AGENCY ACTION FOLLOWING
5 NOTIFICATION.—The head of an executive agency
6 shall take prompt and appropriate action in response
7 to a notification by a recovery audit contractor pur-
8 suant to the requirements under paragraph (4), in-
9 cluding forwarding to other executive agencies any
10 information that applies to them.

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

18 “(e) INSPECTORS GENERAL.—Nothing in this sub-
19 chapter shall be construed as diminishing the authority
20 of any Inspector General, including such authority under
21 the Inspector General Act of 1978.

22 “(f) PRIVACY PROTECTIONS.—

23 “(1) LIMITATION ON DISCLOSURE OF INDIVID-
24 UALLY IDENTIFIABLE INFORMATION.—(A) Any non-
25 governmental entity that obtains individually identi-

1 fiable information through performance of recovery
2 auditing or recovery activity under this chapter may
3 disclose that information only for the purpose of
4 such auditing or activity, respectively, and oversight
5 of such auditing or activity, unless otherwise author-
6 ized by the individual that is the subject of the infor-
7 mation.

8 “(B) Any person that violates subparagraph
9 (A) shall be liable for any damages (including non-
10 pecuniary damages, costs, and attorneys fees)
11 caused by the violation.

12 “(2) DESTRUCTION OR RETURN OF INFORMA-
13 TION.—Upon the conclusion of the matter or need
14 for which individually identifiable information was
15 disclosed in the course of recovery auditing or recov-
16 ery activity under this chapter performed by a non-
17 governmental entity, the nongovernmental entity
18 shall either destroy the individually identifiable in-
19 formation or return it to the person from whom it
20 was obtained, unless another applicable law requires
21 retention of the information.

22 **“§ 3563. Disposition of amounts collected**

23 “(a) IN GENERAL.—Notwithstanding section
24 3302(b) of this title, the amounts collected annually by
25 the United States as a result of recovery audits by an exec-

1 utive agency under this subchapter shall be treated in ac-
2 cordance with this section.

3 “(b) USE FOR RECOVERY AUDIT COSTS.—Amounts
4 referred to in subsection (a) shall be available to the execu-
5 tive agency—

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

8 “(2) to reimburse any applicable appropriation
9 for other recovery audit costs incurred by the execu-
10 tive agency with respect to the audit; and

11 “(3) to pay any fees authorized under chapter
12 37 of this title.

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

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

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

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

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

4 “(1) 50 percent of such amount; plus

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

7 “(e) LIMITATION ON APPLICATION.—

8 “(1) IN GENERAL.—This section shall not apply
9 to amounts collected through recovery audits and re-
10 covery activity to the extent that such application
11 would be inconsistent with another provision of law
12 that authorizes crediting of the amounts to a non-
13 appropriated fund instrumentality, revolving fund,
14 working capital fund, trust fund, or other fund or
15 account.

16 “(2) SUBSECTIONS (c) AND (d).—Subsections
17 (c) and (d) shall not apply to amounts collected
18 through recovery audits and recovery activity, to the
19 extent that such amounts are derived from an ap-
20 propriation or fund that remains available for obliga-
21 tion, or that remain available for recording, adjust-
22 ing, and liquidating obligations properly chargeable
23 to that appropriation or fund at the time the
24 amounts are collected.

1 **“§ 3564. Management improvement program**

2 “(a) CONDUCT OF PROGRAM.—

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

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

15 “(b) PROGRAM FEATURES.—In conducting the pro-
16 gram, the head of the executive agency—

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

20 “(2) may seek to reduce errors and waste in
21 other programs and operations of that executive
22 agency by improving the executive agency’s staff ca-
23 pacity, information technology, and financial man-
24 agement.

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

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

6 “(2) must retain the ability to account specifi-
7 cally for the use of amounts made available under
8 section 3563 of this title.

9 **“§ 3565. Responsibilities of the Office of Management**
10 **and Budget**

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

13 “(b) GUIDANCE.—

14 “(1) IN GENERAL.—The Director, in consulta-
15 tion with the Chief Financial Officers Council and
16 the President’s Council on Integrity and Efficiency,
17 shall issue guidance and provide support to agencies
18 in implementing the subchapter. The Director shall
19 issue initial guidance not later than 180 days after
20 the date of enactment of the Government Waste
21 Corrections Act of 2000.

22 “(2) RECOVERY AUDIT STANDARDS.—The Di-
23 rector shall include in the initial guidance under this
24 subsection standards for the performance of recovery
25 audits under this subchapter, that are developed in

1 consultation with the Comptroller General of the
2 United States and private sector experts on recovery
3 audits, including such experts who currently use re-
4 covery auditing as part of their financial manage-
5 ment procedures.

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

9 “(d) EXEMPTIONS.—

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

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

16 or

17 “(B) would not, or would no longer be
18 cost-effective.

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

1 “(3) EXEMPTION OF MAJOR DEFENSE SYSTEM
2 ACQUISITION PROGRAMS.—

3 “(A) IN GENERAL.—Unless determined
4 otherwise by the head of the agency authorized
5 to conduct a Department of Defense major sys-
6 tem acquisition program, the requirements of
7 section 3562(a) of this title shall not apply to
8 such a program procured with a cost-type con-
9 tract until the contract has become a closed
10 contract.

11 “(B) DEPARTMENT OF DEFENSE MAJOR
12 SYSTEM ACQUISITION PROGRAM DEFINED.—In
13 this paragraph, the term ‘Department of De-
14 fense major system acquisition program’ has
15 the meaning that term has in Office of Manage-
16 ment and Budget Circular A-109, as in effect
17 on the date of the enactment of the Government
18 Waste Corrections Act of 2000.

19 “(e) REPORTS.—

20 “(1) IN GENERAL.—Not later than 1 year after
21 the date the Director issues initial guidance under
22 subsection (b), and annually for each of the 2 years
23 thereafter, the Director shall submit a report on im-
24 plementation of the subchapter to the President, the
25 Committee on Government Reform of the House of

1 Representatives, the Committee on Governmental
2 Affairs of the Senate, and the Committee on Appro-
3 priations of the House of Representatives and of the
4 Senate.

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

6 “(A) a general description and evaluation
7 of the steps taken by executive agencies to con-
8 duct recovery audits, including an inventory of
9 the programs and activities of each executive
10 agency that are subject to recovery audits;

11 “(B) an assessment of the benefits of re-
12 covery auditing and recovery activity, including
13 amounts identified and recovered (including by
14 administrative setoffs);

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

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

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

23 “(F) a description of executive agency
24 management improvement programs under sec-
25 tion 3564 of this title; and

1 “(G) any recommendations for changes in
2 executive agency practices or law or other im-
3 provements that the Director believes would en-
4 hance the effectiveness of executive agency re-
5 covery auditing.

6 **“§ 3566. General Accounting Office reports**

7 “Not later than 60 days after issuance of each report
8 under section 3565(e) of this title the Comptroller General
9 of the United States shall submit a report on the imple-
10 mentation of this subchapter to the Committee on Govern-
11 ment Reform of the House of Representatives, the Com-
12 mittee on Governmental Affairs of the Senate, the Com-
13 mittee on Appropriations of the House of Representatives
14 and of the Senate, and the Director.”.

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

19 (c) DEADLINE FOR INITIATION OF RECOVERY AU-
20 DITS.—The head of each executive agency shall begin the
21 first recovery audit under section 3562(a)(1) title 31,
22 United States Code, as amended by this section, for each
23 payment activity referred to in that section by not later
24 than 18 months after the date of the enactment of this
25 Act.

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

“SUBCHAPTER V—RECOVERY AUDITS

“Sec.

“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.”.